

AMENDED IN ASSEMBLY AUGUST 23, 2012

AMENDED IN ASSEMBLY AUGUST 14, 2012

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN SENATE JANUARY 13, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 323

Introduced by Senator Vargas

February 14, 2011

An act to amend Sections 9653.6, 17900, and 23405.2 of the Business and Professions Code, to amend Section 708.310 of the Code of Civil Procedure, to amend Sections 171.03, 171.3, 1113, 1152, 1157, 2113, 6019.1, 8019.1, 12540.1, 15911.03, 15911.08, 16903, 16908, 16911, and 25005.1 of, to add Section 17657 to, to add Title 2.6 (commencing with Section 17701.01) to, and to repeal Title 2.5 (commencing with Section 17000) of, the Corporations Code, to amend Sections 12190, 12197, and 12262 of the Government Code, to amend Section 1192.95 of the Insurance Code, to amend Sections 17941, 17947, 19141, and 23332 of the Revenue and Taxation Code, and to amend Section 1116 of, *and to repeal Section 623 of*, the Unemployment Insurance Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Vargas. California Revised Uniform Limited Liability Company Act.

(1) Existing law, the Beverly-Killea Limited Liability Company Act, authorizes a limited liability company to engage in any lawful business activity, as specified, and governs the formation of limited liability

companies, including requiring the members to enter into an operating agreement that shall be in writing or oral and to execute and file articles of organization with the Secretary of State.

This bill would repeal that act as of January 1, 2014, and enact the California Revised Uniform Limited Liability Company Act, as of that date, which would recast provisions governing the formation and operation of limited liability companies. The bill would also authorize an operating agreement to be in a record or implied, in addition to being in writing or oral, and authorize a combination of those forms.

(2) Existing law establishes requirements and procedures for membership interests in limited liability companies, including voting, meeting, and inspection rights. Existing law also specifies the duties and obligations of the managers of a limited liability company, including member-managers, as specified.

The bill would distinguish between a manager-managed limited liability company and a member-managed limited liability company for purposes of defining the scope of a member's agency and imposing fiduciary duties only on persons in control of a limited liability company. The bill would authorize the establishment of classes of members.

(3) Existing law provides that the Secretary of State may issue a certificate of status with respect to a limited liability company.

This bill would also authorize the Secretary of State to issue a certificate of registration with respect to a foreign limited liability company.

The bill would provide for the filing of specified records and would further provide that an individual who signs such a record affirms under penalty of perjury that the information in the record is accurate.

(4) Existing law does not specifically provide for jurisdiction of courts in matters regarding a limited liability company.

This bill would allow a limited liability company to be subject to the nonexclusive jurisdiction of courts in another state or the exclusive jurisdiction of California courts. The bill would also allow a member to consent to arbitration, as specified.

(5) Existing law does not specifically provide for a member to dissociate from a limited liability company.

This bill would specify when a member would be dissociated from a limited liability company and the effects of dissociation on the member.

(6) Existing law establishes capital contribution standards and liability of members, and regulates the allocation of profits and losses,

distributions of money and property, withdrawal of membership, assignment of interests, and dissolution of limited liability companies. Existing law requires the registration of foreign limited liability companies, as defined, with the Secretary of State, and prohibits the transaction of business in this state by an unregistered foreign limited liability company, subject to specified penalties. Existing law also regulates the merger of a limited liability company with one or more limited liability companies or other business entities, as specified, including requiring an agreement of merger and protection of the rights and liabilities of limited liability companies, creditors, and dissenting members.

This bill would revise and recast those provisions.

(7) Existing law requires employers to withhold tax and make contribution amounts with respect to unemployment insurance, disability insurance, employee training funding, and personal income tax from the wages paid to their employees. Existing law, with specified exceptions, requires that the determination of the employer-employee relationship be made pursuant to common law principles. Existing law defines “employee” for those purposes to include, among other individuals, any officer of a corporation, and any member of a limited liability company that is treated as a corporation for federal income tax purposes within that definition of “employee” for those purposes. Existing law exempts from the definition of “employee” a member of a limited liability company that is treated as a partnership for federal income tax purposes.

This bill would repeal that exemption on January 1, 2013.

~~(7)~~

(8) The bill would provide that its provisions shall be operative on January 1, 2014, except as specified.

(9) Because this bill would expand the scope of the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 9653.6 of the Business and Professions Code is amended to read:

9653.6. (a) No person licensed under this code as a cemetery broker, cemetery salesperson, cemetery manager, funeral director, embalmer, crematorium licensee, or other person licensed to provide services related to cemeteries and funerals shall have any ownership interest as a member in a limited liability company certificated as a cemetery authority pursuant to Section 7018 of the Health and Safety Code.

(b) If a limited liability company admits, as a member with ownership interest, a licensed person described in subdivision (a), the limited liability company, by operation of law, shall be deemed in violation of subdivision (e) of Section 17701.04 of the Corporations Code, and the members shall be treated as partners with joint and several liability for claims made upon acts, errors, or omissions arising out of services provided by any licensed person described in subdivision (a).

(c) If the bureau determines that a licensed cemetery broker, cemetery salesperson, cemetery manager, funeral director, embalmer, crematorium licensee, or other person licensed to provide services related to cemeteries and funerals has an ownership interest as a member in the limited liability company, the bureau shall suspend the limited liability company's certificate of authority. The bureau shall reinstate the certificate of authority only upon finding that the licensed cemetery broker, cemetery salesperson, cemetery manager, funeral director, embalmer, crematorium licensee, or other person licensed to provide services related to cemeteries and funerals has been divested of his or her ownership interest in the limited liability company or has voluntarily surrendered his or her license.

SEC. 2. Section 17900 of the Business and Professions Code is amended to read:

17900. (a) (1) The purpose of this section is to protect those dealing with individuals or partnerships doing business under fictitious names, and it is not intended to confer any right or advantage on individuals or firms that fail to comply with the law. The filing of a fictitious business name certificate is designed to

1 make available to the public the identities of persons doing business
2 under the fictitious name.

3 (2) Nothing in this section shall be construed to impair or impede
4 the rebuttable presumption described in Section 14411.

5 (b) As used in this chapter, “fictitious business name” means:

6 (1) In the case of an individual, a name that does not include
7 the surname of the individual or a name that suggests the existence
8 of additional owners, as described in subdivision (c).

9 (2) In the case of a partnership or other association of persons,
10 other than a limited partnership that has filed a certificate of limited
11 partnership with the California Secretary of State pursuant to
12 Section 15902.01 of the Corporations Code, a foreign limited
13 partnership that has filed an application for registration with the
14 California Secretary of State pursuant to Section 15909.02 of the
15 Corporations Code, a registered limited liability partnership that
16 has filed a registration pursuant to Section 16953 of the
17 Corporations Code, or a foreign limited liability partnership that
18 has filed an application for registration pursuant to Section 16959
19 of the Corporations Code, a name that does not include the surname
20 of each general partner or a name that suggests the existence of
21 additional owners, as described in subdivision (c) and in Section
22 17901.

23 (3) In the case of a domestic or foreign corporation, any name
24 other than the corporate name stated in its articles of incorporation
25 filed with the California Secretary of State, in accordance with
26 subdivision (a) of Section 17910.5.

27 (4) In the case of a limited partnership that has filed a certificate
28 of limited partnership with the California Secretary of State
29 pursuant to Section 15902.01 of the Corporations Code and in the
30 case of a foreign limited partnership that has filed an application
31 for registration with the California Secretary of State pursuant to
32 Section 15902.02 of the Corporations Code, any name other than
33 the name of the limited partnership as on file with the California
34 Secretary of State.

35 (5) In the case of a limited liability company, any name other
36 than the name stated in its articles of organization and in the case
37 of a foreign limited liability company that has filed an application
38 for registration with the California Secretary of State pursuant to
39 Section 17708.02 of the Corporations Code, any name other than
40 the name of the limited liability company as on file with the

1 California Secretary of State, in accordance with subdivision (b)
2 of Section 17910.5.

3 (c) A name that suggests the existence of additional owners
4 within the meaning of subdivision (b) is one that includes such
5 words as “Company,” “& Company,” “& Son,” “& Sons,” “&
6 Associates,” “Brothers,” and the like, but not words that merely
7 describe the business being conducted.

8 SEC. 3. Section 23405.2 of the Business and Professions Code
9 is amended to read:

10 23405.2. (a) Any limited liability company holding a license
11 under this division shall maintain a record of its members at the
12 principal office of the company in California and the record of its
13 members shall be available to the department for inspection. The
14 company shall report to the department in writing any of the
15 following:

16 (1) Issuance or transfer of memberships to any person where
17 the issuance or transfer results in the person owning 10 percent or
18 more of the voting interests of the company.

19 (2) If the limited liability company is managed by a manager
20 or managers, any change in the manager or managers of the
21 company.

22 (3) If any officer has been appointed, any change in the officers
23 of the company.

24 The report shall be filed with the department within 30 days after
25 the issuance or transfer of membership voting interests, or any
26 change in members, managers, or officers.

27 (b) Any limited liability company within the purview of this
28 section that is required under the provisions of the Federal Alcohol
29 Administration Act or the Internal Revenue Code to report to the
30 federal government the information required by this section may
31 send to the department a copy of the report at the same time as it
32 is sent to the federal government. The copy of the report sent to
33 the department by the company shall be deemed sufficient
34 compliance with the provisions of this section.

35 (c) The reporting requirements of subdivision (b) shall not apply
36 to a limited liability company that is required by law to file periodic
37 reports with the Securities and Exchange Commission.

38 (d) The person or persons who are required to sign the
39 application shall certify to the department on forms prescribed by
40 the department whether or not any member, manager, or officer

1 holds an ownership interest, directly or indirectly, in any license
2 within or without this state to manufacture, import, distribute,
3 rectify, or sell alcoholic beverages. The department may deny any
4 application or suspend or revoke any license under this section in
5 the event any member, manager, or officer holds or acquires any
6 prohibited ownership interest, directly or indirectly, in any licensed
7 business in violation of the tied-house provisions of Chapter 15
8 (commencing with Section 25500).

9 (e) The department may deny any application and suspend or
10 revoke any license of a limited liability company subject to the
11 provisions of this section where conditions exist in relation to any
12 manager, officer, or person holding 10 percent or more of the
13 voting interests of the limited liability company that would
14 constitute grounds for disciplinary action against the person if he
15 or she was a licensee.

16 (f) All articles of organization and operating agreements of a
17 limited liability company or certificates or amendments thereto
18 shall be filed with the department at the time of filing the
19 application for the license. All articles of organization, operating
20 agreements, certificates, or amendments executed after the issuance
21 of the license shall be filed with the department within 30 days
22 after execution.

23 (g) The requirements of this section are in addition to the
24 requirements set forth in the California Revised Uniform Limited
25 Liability Company Act (Title 2.6 (commencing with Section
26 17701.01) of the Corporations Code).

27 SEC. 4. Section 708.310 of the Code of Civil Procedure is
28 amended to read:

29 708.310. If a money judgment is rendered against a partner or
30 member but not against the partnership or limited liability
31 company, the judgment debtor's interest in the partnership or
32 limited liability company may be applied toward the satisfaction
33 of the judgment by an order charging the judgment debtor's interest
34 pursuant to Section 15907.3, 16504, or 17705.03 of the
35 Corporations Code.

36 SEC. 5. Section 171.03 of the Corporations Code is amended
37 to read:

38 171.03. "Foreign limited liability company" means a foreign
39 limited liability company as defined in subdivision (j) of Section
40 17701.02.

SEC. 6. Section 171.3 of the Corporations Code is amended to read:

171.3. “Limited liability company” means a limited liability company as defined in subdivision (k) of Section 17701.02.

SEC. 7. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party that desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation that desires to merge and, if required, the shareholders shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be,

1 subject to subdivision (b) of Section 201, the same as or similar
2 to the name of a disappearing party to the merger.

3 (4) The manner of converting the shares of each constituent
4 corporation into shares, interests, or other securities of the surviving
5 party. If any shares of any constituent corporation are not to be
6 converted solely into shares, interests or other securities of the
7 surviving party, the agreement of merger shall state (i) the cash,
8 rights, securities, or other property which the holders of those
9 shares are to receive in exchange for the shares, which cash, rights,
10 securities, or other property may be in addition to or in lieu of
11 shares, interests or other securities of the surviving party, or (ii)
12 that the shares are canceled without consideration.

13 (5) Any other details or provisions required by the laws under
14 which any party to the merger is organized, including, if a public
15 benefit corporation or a religious corporation is a party to the
16 merger, Section 6019.1, or, if a mutual benefit corporation is a
17 party to the merger, Section 8019.1, or, if a consumer cooperative
18 corporation is a party to the merger, Section 12540.1, or if an
19 unincorporated association is a party to the merger, Section 18370,
20 or, if a domestic limited partnership is a party to the merger,
21 Section 15911.12, or, if a domestic partnership is a party to the
22 merger, Section 16911, or, if a domestic limited liability company
23 is a party to the merger, Section 17710.12.

24 (6) Any other details or provisions as are desired, including,
25 without limitation, a provision for the payment of cash in lieu of
26 fractional shares or for any other arrangement with respect thereto
27 consistent with the provisions of Section 407.

28 (c) Each share of the same class or series of any constituent
29 corporation (other than the cancellation of shares held by a party
30 to the merger or its parent, or a wholly owned subsidiary of either,
31 in another constituent corporation) shall, unless all shareholders
32 of the class or series consent and except as provided in Section
33 407, be treated equally with respect to any distribution of cash,
34 rights, securities, or other property. Notwithstanding paragraph
35 (4) of subdivision (b), the unredeemable common shares of a
36 constituent corporation may be converted only into unredeemable
37 common shares of a surviving corporation or a parent party
38 (Section 1200) or unredeemable equity securities of a surviving
39 party other than a corporation if another party to the merger or its
40 parent owns, directly or indirectly, prior to the merger shares of

1 that corporation representing more than 50 percent of the voting
2 power of that corporation, unless all of the shareholders of the
3 class consent and except as provided in Section 407.

4 (d) Notwithstanding its prior approval, an agreement of merger
5 may be amended prior to the filing of the agreement of merger or
6 the certificate of merger, as is applicable, if the amendment is
7 approved by the board of each constituent corporation and, if the
8 amendment changes any of the principal terms of the agreement,
9 by the outstanding shares (Section 152), if required by Chapter 12
10 (commencing with Section 1200), in the same manner as the
11 original agreement of merger. If the agreement of merger as so
12 amended and approved is also approved by each of the other parties
13 to the agreement of merger, the agreement of merger as so amended
14 shall then constitute the agreement of merger.

15 (e) The board of a constituent corporation may, in its discretion,
16 abandon a merger, subject to the contractual rights, if any, of third
17 parties, including other parties to the agreement of merger, without
18 further approval by the outstanding shares (Section 152), at any
19 time before the merger is effective.

20 (f) Each constituent corporation shall sign the agreement of
21 merger by its chairperson of the board, president or a vice president,
22 and also by its secretary or an assistant secretary acting on behalf
23 of their respective corporations.

24 (g) (1) If the surviving party is a corporation or a foreign
25 corporation, or if a flexible purpose corporation (Section 171.08),
26 a public benefit corporation (Section 5060), a mutual benefit
27 corporation (Section 5059), a religious corporation (Section 5061),
28 or a corporation organized under the Consumer Cooperative
29 Corporation Law (Section 12200) is a party to the merger, after
30 required approvals of the merger by each constituent corporation
31 through approval of the board (Section 151) and any approval of
32 the outstanding shares (Section 152) required by Chapter 12
33 (commencing with Section 1200) and by the other parties to the
34 merger, the surviving party shall file a copy of the agreement of
35 merger with an officers' certificate of each constituent domestic
36 and foreign corporation attached stating the total number of
37 outstanding shares or membership interests of each class entitled
38 to vote on the merger (and identifying any other person or persons
39 whose approval is required), that the agreement of merger in the
40 form attached or its principal terms, as required, were approved

1 by that corporation by a vote of a number of shares or membership
2 interests of each class that equaled or exceeded the vote required,
3 specifying each class entitled to vote and the percentage vote
4 required of each class and, if applicable, by that other person or
5 persons whose approval is required, or that the merger agreement
6 was entitled to be and was approved by the board alone (as
7 provided in Section 1201, in the case of corporations subject to
8 that section). If equity securities of a parent party (Section 1200)
9 are to be issued in the merger, the officers' certificate of that
10 controlled party shall state either that no vote of the shareholders
11 of the parent party was required or that the required vote was
12 obtained. In lieu of an officers' certificate, a certificate of merger,
13 on a form prescribed by the Secretary of State, shall be filed for
14 each constituent other business entity. The certificate of merger
15 shall be executed and acknowledged by each domestic constituent
16 limited liability company by all managers of the limited liability
17 company (unless a lesser number is specified in its articles of
18 organization or operating agreement) and by each domestic
19 constituent limited partnership by all general partners (unless a
20 lesser number is provided in its certificate of limited partnership
21 or partnership agreement) and by each domestic constituent general
22 partnership by two partners (unless a lesser number is provided in
23 its partnership agreement) and by each foreign constituent limited
24 liability company by one or more managers and by each foreign
25 constituent general partnership or foreign constituent limited
26 partnership by one or more general partners, and by each
27 constituent reciprocal insurer by the chairperson of the board,
28 president, or vice president, and by the secretary or assistant
29 secretary, or, if a constituent reciprocal insurer has not appointed
30 those officers, by the chairperson of the board, president, or vice
31 president, and by the secretary or assistant secretary of the
32 constituent reciprocal insurer's attorney-in-fact, and by each other
33 party to the merger by those persons required or authorized to
34 execute the certificate of merger by the laws under which that party
35 is organized, specifying for that party the provision of law or other
36 basis for the authority of the signing persons. The certificate of
37 merger shall set forth, if a vote of the shareholders, members,
38 partners, or other holders of interests of the constituent other
39 business entity was required, a statement setting forth the total
40 number of outstanding interests of each class entitled to vote on

1 the merger and that the agreement of merger in the form attached
2 or its principal terms, as required, were approved by a vote of the
3 number of interests of each class that equaled or exceeded the vote
4 required, specifying each class entitled to vote and the percentage
5 vote required of each class, and any other information required to
6 be set forth under the laws under which the constituent other
7 business entity is organized, including, if a domestic limited
8 partnership is a party to the merger, subdivision (a) of Section
9 15911.14, if a domestic partnership is a party to the merger,
10 subdivision (b) of Section 16915, and, if a domestic limited liability
11 company is a party to the merger, subdivision (a) of Section
12 17710.04. The certificate of merger for each constituent foreign
13 other business entity, if any, shall also set forth the statutory or
14 other basis under which that foreign other business entity is
15 authorized by the laws under which it is organized to effect the
16 merger. The merger and any amendment of the articles of the
17 surviving corporation, if applicable, contained in the agreement
18 of merger shall be effective upon filing of the agreement of merger
19 with an officer's certificate of each constituent domestic and
20 foreign corporation and a certificate of merger for each constituent
21 other business entity, subject to subdivision (c) of Section 110 and
22 subject to the provisions of subdivision (j), and the several parties
23 thereto shall be one entity. If a domestic reciprocal insurer
24 organized after 1974 to provide medical malpractice insurance is
25 a party to the merger, the agreement of merger or certificate of
26 merger shall not be filed until there has been filed the certificate
27 issued by the Insurance Commissioner approving the merger
28 pursuant to Section 1555 of the Insurance Code. The Secretary of
29 State may certify a copy of the agreement of merger separate from
30 the officers' certificates and certificates of merger attached thereto.

31 (2) If the surviving entity is an other business entity, and no
32 public benefit corporation (Section 5060), mutual benefit
33 corporation (Section 5059), religious corporation (Section 5061),
34 or corporation organized under the Consumer Cooperative
35 Corporation Law (Section 12200) is a party to the merger, after
36 required approvals of the merger by each constituent corporation
37 through approval of the board (Section 151) and any approval of
38 the outstanding shares (Section 152) required by Chapter 12
39 (commencing with Section 1200) and by the other parties to the
40 merger, the parties to the merger shall file a certificate of merger

1 in the office of, and on a form prescribed by, the Secretary of State.
2 The certificate of merger shall be executed and acknowledged by
3 each constituent domestic and foreign corporation by its
4 chairperson of the board, president or a vice president, and also
5 by its secretary or an assistant secretary and by each domestic
6 constituent limited liability company by all managers of the limited
7 liability company (unless a lesser number is specified in its articles
8 of organization or operating agreement) and by each domestic
9 constituent limited partnership by all general partners (unless a
10 lesser number is provided in its certificate of limited partnership
11 or partnership agreement) and by each domestic constituent general
12 partnership by two partners (unless a lesser number is provided in
13 its partnership agreement) and by each foreign constituent limited
14 liability company by one or more managers and by each foreign
15 constituent general partnership or foreign constituent limited
16 partnership by one or more general partners, and by each
17 constituent reciprocal insurer by the chairperson of the board,
18 president, or vice president, and by the secretary or assistant
19 secretary, or, if a constituent reciprocal insurer has not appointed
20 those officers, by the chairperson of the board, president, or vice
21 president, and by the secretary or assistant secretary of the
22 constituent reciprocal insurer's attorney-in-fact. The certificate of
23 merger shall be signed by each other party to the merger by those
24 persons required or authorized to execute the certificate of merger
25 by the laws under which that party is organized, specifying for
26 that party the provision of law or other basis for the authority of
27 the signing persons. The certificate of merger shall set forth all of
28 the following:

29 (A) The name, place of incorporation or organization, and the
30 Secretary of State's file number, if any, of each party to the merger,
31 separately identifying the disappearing parties and the surviving
32 party.

33 (B) If the approval of the outstanding shares of a constituent
34 corporation was required by Chapter 12 (commencing with Section
35 1200), a statement setting forth the total number of outstanding
36 shares of each class entitled to vote on the merger and that the
37 principal terms of the agreement of merger were approved by a
38 vote of the number of shares of each class entitled to vote and the
39 percentage vote required of each class.

1 (C) The future effective date or time, not more than 90 days
2 subsequent to the date of filing of the merger, if the merger is not
3 to be effective upon the filing of the certificate of merger with the
4 office of the Secretary of State.

5 (D) A statement, by each party to the merger which is a domestic
6 corporation not organized under this division, a foreign corporation,
7 or an other business entity, of the statutory or other basis under
8 which that party is authorized by the laws under which it is
9 organized to effect the merger.

10 (E) Any other information required to be stated in the certificate
11 of merger by the laws under which each party to the merger is
12 organized, including, if a domestic limited liability company is a
13 party to the merger, subdivision (a) of Section 17710.14, if a
14 domestic partnership is a party to the merger, subdivision (b) of
15 Section 16915, and, if a domestic limited partnership is a party to
16 the merger, subdivision (a) of Section 15911.14.

17 (F) Any other details or provisions that may be desired.

18 Unless a future effective date or time is provided in a certificate
19 of merger, in which event the merger shall be effective at that
20 future effective date or time, a merger shall be effective upon the
21 filing of the certificate of merger in the office of the Secretary of
22 State and the several parties thereto shall be one entity. The
23 surviving other business entity shall keep a copy of the agreement
24 of merger at its principal place of business which, for purposes of
25 this subdivision, shall be the office referred to in Section 17710.13
26 if a domestic limited liability company, at the business address
27 specified in paragraph (5) of subdivision (a) of Section 17710.14
28 if a foreign limited liability company, at the office referred to in
29 subdivision (a) of Section 16403 if a domestic general partnership,
30 at the business address specified in subdivision (f) of Section 16911
31 if a foreign partnership, at the office referred to in subdivision (a)
32 of Section 15901.14 if a domestic limited partnership, or at the
33 business address specified in paragraph (3) of subdivision (a) of
34 Section 15909.02 if a foreign limited partnership. Upon the request
35 of a holder of equity securities of a party to the merger, a person
36 with authority to do so on behalf of the surviving other business
37 entity shall promptly deliver to that holder, a copy of the agreement
38 of merger. A waiver by that holder of the rights provided in the
39 foregoing sentence shall be unenforceable. If a domestic reciprocal
40 insurer organized after 1974 to provide medical malpractice

1 insurance is a party to the merger the agreement of merger or
2 certificate of merger shall not be filed until there has been filed
3 the certificate issued by the Insurance Commissioner approving
4 the merger in accordance with Section 1555 of the Insurance Code.

5 (h) (1) A copy of an agreement of merger certified on or after
6 the effective date by an official having custody thereof has the
7 same force in evidence as the original and, except as against the
8 state, is conclusive evidence of the performance of all conditions
9 precedent to the merger, the existence on the effective date of the
10 surviving party to the merger, and the performance of the
11 conditions necessary to the adoption of any amendment to the
12 articles, if applicable, contained in the agreement of merger.

13 (2) For all purposes for a merger in which the surviving entity
14 is a domestic other business entity and the filing of a certificate of
15 merger is required by paragraph (2) of subdivision (g), a copy of
16 the certificate of merger duly certified by the Secretary of State is
17 conclusive evidence of the merger of the constituent corporations,
18 either by themselves or together with the other parties to the
19 merger, into the surviving other business entity.

20 (i) (1) Upon a merger pursuant to this section, the separate
21 existences of the disappearing parties to the merger cease and the
22 surviving party to the merger shall succeed, without other transfer,
23 to all the rights and property of each of the disappearing parties to
24 the merger and shall be subject to all the debts and liabilities of
25 each in the same manner as if the surviving party to the merger
26 had itself incurred them.

27 (2) All rights of creditors and all liens upon the property of each
28 of the constituent corporations and other parties to the merger shall
29 be preserved unimpaired, provided that those liens upon property
30 of a disappearing party shall be limited to the property affected
31 thereby immediately prior to the time the merger is effective.

32 (3) Any action or proceeding pending by or against any
33 disappearing corporation or disappearing party to the merger may
34 be prosecuted to judgment, which shall bind the surviving party,
35 or the surviving party may be proceeded against or substituted in
36 its place.

37 (4) If a limited partnership or a general partnership is a party to
38 the merger, nothing in this section is intended to affect the liability
39 a general partner of a disappearing limited partnership or general
40 partnership may have in connection with the debts and liabilities

1 of the disappearing limited partnership or general partnership
2 existing prior to the time the merger is effective.

3 (j) (1) The merger of domestic corporations with foreign
4 corporations or foreign other business entities in a merger in which
5 one or more other business entities is a party shall comply with
6 subdivision (a) and this subdivision.

7 (2) If the surviving party is a domestic corporation or domestic
8 other business entity, the merger proceedings with respect to that
9 party and any domestic disappearing corporation shall conform to
10 the provisions of this section. If the surviving party is a foreign
11 corporation or foreign other business entity, then, subject to the
12 requirements of subdivision (c), and of Section 407 and Chapter
13 12 (commencing with Section 1200) and Chapter 13 (commencing
14 with Section 1300), and, if applicable, corresponding provisions
15 of the Nonprofit Corporation Law or the Consumer Cooperative
16 Corporation Law, with respect to any domestic constituent
17 corporations, Article 11 (commencing with Section 17711.01) of
18 Title 2.6 with respect to any domestic constituent limited liability
19 companies, Article 6 (commencing with Section 16601) of Chapter
20 5 of Title 2 with respect to any domestic constituent general
21 partnerships, and Article 11.5 (commencing with Section 15911.20)
22 of Chapter 5.5 of Title 2 with respect to any domestic constituent
23 limited partnerships, the merger proceedings may be in accordance
24 with the laws of the state or place of incorporation or organization
25 of the surviving party.

26 (3) If the surviving party is a domestic corporation or domestic
27 other business entity, the certificate of merger or the agreement of
28 merger with attachments shall be filed as provided in subdivision
29 (g) and thereupon, subject to subdivision (c) of Section 110 or
30 paragraph (2) of subdivision (g), as is applicable, the merger shall
31 be effective as to each domestic constituent corporation and
32 domestic constituent other business entity.

33 (4) If the surviving party is a foreign corporation or foreign
34 other business entity, the merger shall become effective in
35 accordance with the law of the jurisdiction in which the surviving
36 party is organized, but, except as provided in paragraph (5), the
37 merger shall be effective as to any domestic disappearing
38 corporation as of the time of effectiveness in the foreign jurisdiction
39 upon the filing in this state of a copy of the agreement of merger
40 with an officers' certificate of each constituent foreign and

1 domestic corporation and a certificate of merger of each constituent
2 other business entity attached, which officers' certificates and
3 certificates of merger shall conform to the requirements of
4 paragraph (1) of subdivision (g). If one or more domestic other
5 business entities is a disappearing party in a merger pursuant to
6 this subdivision in which a foreign other business entity is the
7 surviving entity, a certificate of merger required by the laws under
8 which that domestic other business entity is organized, including
9 subdivision (a) of Section 15911.14, subdivision (b) of Section
10 16915, or subdivision (a) of Section 17710.14, as is applicable,
11 shall also be filed at the same time as the filing of the agreement
12 of merger.

13 (5) If the date of the filing in this state pursuant to this
14 subdivision is more than six months after the time of the
15 effectiveness in the foreign jurisdiction, or if the powers of a
16 domestic disappearing corporation are suspended at the time of
17 effectiveness in the foreign jurisdiction, the merger shall be
18 effective as to the domestic disappearing corporation as of the date
19 of filing in this state.

20 (6) In a merger described in paragraph (3) or (4), each foreign
21 disappearing corporation that is qualified for the transaction of
22 intrastate business shall by virtue of the filing pursuant to this
23 subdivision, subject to subdivision (c) of Section 110, automatically
24 surrender its right to transact intrastate business in this state. The
25 filing of the agreement of merger or certificate of merger, as is
26 applicable, pursuant to this subdivision, by a disappearing foreign
27 other business entity registered for the transaction of intrastate
28 business in this state shall, by virtue of that filing, subject to
29 subdivision (c) of Section 110, automatically cancels the
30 registration for that foreign other business entity, without the
31 necessity of the filing of a certificate of cancellation.

32 SEC. 8. Section 1152 of the Corporations Code is amended to
33 read:

34 1152. (a) A corporation that desires to convert to a domestic
35 other business entity shall approve a plan of conversion. The plan
36 of conversion shall state all of the following:

37 (1) The terms and conditions of the conversion.

38 (2) The jurisdiction of the organization of the converted entity
39 and of the converting corporation and the name of the converted
40 entity after conversion.

1 (3) The manner of converting the shares of each of the
2 shareholders of the converting corporation into securities of, or
3 interests in, the converted entity.

4 (4) The provisions of the governing documents for the converted
5 entity, including the partnership agreement or limited liability
6 company articles of organization and operating agreement, to
7 which the holders of interests in the converted entity are to be
8 bound.

9 (5) Any other details or provisions that are required by the laws
10 under which the converted entity is organized, or that are desired
11 by the converting corporation.

12 (b) The plan of conversion shall be approved by the board of
13 the converting corporation (Section 151), and the principal terms
14 of the plan of the conversion shall be approved by the outstanding
15 shares (Section 152) of each class of the converting corporation.
16 The approval of the outstanding shares may be given before or
17 after approval by the board. Notwithstanding the foregoing, if a
18 converting corporation is a close corporation, the conversion shall
19 be approved by the affirmative vote of at least two-thirds of each
20 class, or a greater vote if required in the articles, of outstanding
21 shares (Section 152) of that converting corporation; provided,
22 however, that the articles may provide for a lesser vote, but not
23 less than a majority of the outstanding shares of each class.

24 (c) If the corporation is converting into a general or limited
25 partnership or into a limited liability company, then in addition to
26 the approval of the shareholders set forth in subdivision (b), the
27 plan of conversion shall be approved by each shareholder who will
28 become a general partner or manager, as applicable, of the
29 converted entity pursuant to the plan of conversion unless the
30 shareholders have dissenters' rights pursuant to Section 1159 and
31 Chapter 13 (commencing with Section 1300).

32 (d) If the corporation is converting into a flexible purpose
33 corporation, both of the following shall apply:

34 (1) Notwithstanding subdivision (b), the plan of conversion
35 shall be approved by the affirmative vote of at least two-thirds of
36 each class, or a greater vote if required in the articles, of
37 outstanding shares (Section 152) of that converting corporation.

38 (2) The shareholders of the converting corporation shall have
39 all of the rights under Chapter 13 (commencing with Section 1300)
40 of the shareholders of a corporation involved in a reorganization

1 requiring the approval of its outstanding shares (Section 152), and
2 the converting corporation shall have all of the obligations under
3 Chapter 13 (commencing with Section 1300) of a corporation
4 involved in a reorganization, without regard to whether the
5 conversion constitutes a reorganization requiring a shareholder
6 vote under Chapter 12 (commencing with Section 1200).

7 (e) Upon the effectiveness of the conversion, all shareholders
8 of the converting corporation, except those that exercise dissenters'
9 rights as provided in Section 1159 and Chapter 13 (commencing
10 with Section 1300), shall be deemed parties to any agreement or
11 agreements constituting the governing documents for the converted
12 entity adopted as part of the plan of conversion, irrespective of
13 whether or not a shareholder has executed the plan of conversion
14 or those governing documents for the converted entity. Any
15 adoption of governing documents made pursuant thereto shall be
16 effective at the effective time or date of the conversion.

17 (f) Notwithstanding its prior approval by the board and the
18 outstanding shares or either of them, a plan of conversion may be
19 amended before the conversion takes effect if the amendment is
20 approved by the board and, if it changes any of the principal terms
21 of the plan of conversion, by the shareholders of the converting
22 corporation in the same manner and to the same extent as was
23 required for approval of the original plan of conversion.

24 (g) A plan of conversion may be abandoned by the board of a
25 converting corporation, or by the shareholders of a converting
26 corporation if the abandonment is approved by the outstanding
27 shares, in each case in the same manner as required for approval
28 of the plan of conversion, subject to the contractual rights of third
29 parties, at any time before the conversion is effective.

30 (h) The converted entity shall keep the plan of conversion at
31 (1) the principal place of business of the converted entity if the
32 converted entity is a domestic partnership or (2) at the office at
33 which records are to be kept under Section 15901.11 if the
34 converted entity is a domestic limited partnership or at the office
35 at which records are to be kept under Section 17701.13 if the
36 converted entity is a domestic limited liability company. Upon the
37 request of a shareholder of a converting corporation, the authorized
38 person on behalf of the converted entity shall promptly deliver to
39 the shareholder, at the expense of the converted entity, a copy of

1 the plan of conversion. A waiver by a shareholder of the rights
2 provided in this subdivision shall be unenforceable.

3 SEC. 9. Section 1157 of the Corporations Code is amended to
4 read:

5 1157. (a) An other business entity or a foreign other business
6 entity or a foreign corporation may be converted into a corporation
7 pursuant to this chapter only if the converting entity is authorized
8 by the laws under which it is organized to effect the conversion.

9 (b) An other business entity or a foreign other business entity
10 or a foreign corporation that desires to convert into a corporation
11 shall approve a plan of conversion or other instrument as is required
12 to be approved to effect the conversion pursuant to the laws under
13 which that entity is organized.

14 (c) The conversion of an other business entity or a foreign other
15 business entity or a foreign corporation shall be approved by the
16 number or percentage of the partners, members, shareholders, or
17 other holders of interest of the converting entity that is required
18 by the laws under which that entity is organized, or a greater or
19 lesser percentage as may be set forth in the converting entity's
20 partnership agreement, articles of organization, operating
21 agreement, articles of incorporation, or other governing document
22 in accordance with applicable laws.

23 (d) The conversion by an other business entity or a foreign other
24 business entity or a foreign corporation shall be effective under
25 this chapter upon the filing with the Secretary of State of the
26 articles of incorporation of the converted corporation, containing
27 a statement of conversion that complies with subdivision (e).

28 (e) A statement of conversion of an entity converting into a
29 corporation pursuant to this chapter shall set forth all of the
30 following:

31 (1) The name, form, and jurisdiction of organization of the
32 converting entity.

33 (2) The Secretary of State's file number, if any, of the converting
34 entity.

35 (3) If the converting entity is a foreign other business entity or
36 a foreign corporation, the statement of conversion shall contain
37 the following:

38 (A) A statement that the converting entity is authorized to effect
39 the conversion by the laws under which it is organized.

1 (B) A statement that the converting entity has approved a plan
2 of conversion or other instrument as is required to be approved to
3 effect the conversion pursuant to the laws under which the
4 converting entity is organized.

5 (C) A statement that the conversion has been approved by the
6 number or percentage of the partners, members, shareholders, or
7 other holders of interest of the converting entity that is required
8 by the laws under which that entity is organized, or a greater or
9 lesser percentage as may be set forth in the converting entity's
10 partnership agreement, articles of organization, operating
11 agreement, articles of incorporation, or other governing document
12 in accordance with applicable laws.

13 (f) The filing with the Secretary of State of articles of
14 incorporation containing a statement pursuant to subdivision (e)
15 shall have the effect of the filing of a certificate of cancellation by
16 a converting foreign limited liability company or foreign limited
17 partnership, and no converting foreign limited liability company
18 or foreign limited partnership that has made the filing is required
19 to file a certificate of cancellation under Section 15909.07 or
20 17708.06 as a result of that conversion. If a converting entity is a
21 foreign corporation qualified to transact business in this state, the
22 foreign corporation shall, by virtue of the filing, automatically
23 surrender its right to transact intrastate business.

24 SEC. 10. Section 2113 of the Corporations Code is amended
25 to read:

26 2113. (a) The filing of an agreement of merger of a foreign
27 disappearing corporation qualified to transact intrastate business
28 in this state pursuant to Section 1103, or the filing pursuant to
29 subdivision (d) of Section 1108 of an agreement, certificate, or
30 other document as to a merger that includes a disappearing foreign
31 corporation qualified to transact intrastate business, or the filing
32 of a certificate of ownership as to a foreign subsidiary corporation
33 qualified to transact intrastate business in this state pursuant to
34 Section 1110, or the filing by a foreign corporation qualified to
35 transact intrastate business in this state of an organizational
36 document containing a statement of conversion pursuant to Section
37 15911.08, 16908, or 17710.08, constitutes the surrender by the
38 foreign corporation of its right to engage in intrastate business
39 within this state.

1 (b) With respect to corporations for which documents have not
2 been filed as provided in subdivision (a), a certificate of surrender
3 as prescribed by Section 2112 shall be filed by a foreign
4 corporation qualified to transact intrastate business upon its merger
5 into another foreign corporation.

6 (c) In lieu of a signature as prescribed by Section 2112, a
7 certificate of surrender pursuant to subdivision (b) for a merged
8 foreign corporation may be signed in the name of the surviving
9 corporation by an officer thereof. In that case, the certificate of
10 surrender shall be accompanied by a certificate of an authorized
11 public official of the state or place of incorporation of the merged
12 foreign corporation stating that the corporation has been merged
13 into another foreign corporation and setting forth the name and
14 state or place of incorporation of the surviving foreign corporation.

15 SEC. 11. Section 6019.1 of the Corporations Code is amended
16 to read:

17 6019.1. (a) Subject to the provisions of Sections 6010 and
18 9640, any one or more corporations may merge with one or more
19 other business entities (Section 5063.5). One or more other
20 domestic corporations and foreign corporations (Section 5053)
21 may be parties to the merger. Notwithstanding the provisions of
22 this section, such a merger may be effected only if:

23 (1) In a merger in which a domestic corporation or domestic
24 other business entity is a party, it is authorized by the laws under
25 which it is organized to effect the merger.

26 (2) In a merger in which a foreign corporation is a party, it is
27 authorized by the laws under which it is organized to effect the
28 merger.

29 (3) In a merger in which a foreign other business entity is a
30 party, it is authorized by the laws under which it is organized to
31 effect the merger.

32 (b) Each corporation and each other party which desires to merge
33 shall approve an agreement of merger. The board and the members
34 (Section 5034) of each corporation which desires to merge, and
35 each other person or persons, if any, whose approval of an
36 amendment of the articles of that corporation is required by the
37 articles or bylaws shall approve the agreement of merger. The
38 agreement of merger shall be approved on behalf of each other
39 party by those persons authorized or required to approve the merger
40 by the laws under which it is organized. The parties desiring to

1 merge shall be parties to the agreement of merger and other
2 persons, including a parent party (Section 5064.5), may be parties
3 to the agreement of merger. The agreement of merger shall state
4 all of the following:

5 (1) The terms and conditions of the merger.

6 (2) The name and place of incorporation or organization of each
7 party and the identity of the surviving party.

8 (3) The amendments, if any, subject to Sections 5810 and 5816,
9 to the articles of the surviving corporation, if applicable, to be
10 effected by the merger. The name of the surviving corporation
11 may be, subject to subdivision (b) of Section 5122 and subdivision
12 (b) of Section 9122, the same as, or similar to, the name of a
13 disappearing party to the merger.

14 (4) The manner, if any, of converting the memberships of each
15 of the constituent corporations into shares, memberships, interests,
16 or other securities of the surviving party; and, if any memberships
17 of any of the constituent corporations are not to be converted solely
18 into shares, memberships, interests, or other securities of the
19 surviving party, the cash, rights, securities, or other property which
20 the holders of those memberships are to receive in exchange for
21 the memberships, which cash, rights, securities, or other property
22 may be in addition to, or in lieu of, shares, memberships, interests,
23 or other securities of the surviving corporation or surviving other
24 business entity.

25 (5) Any other details or provisions required by the laws under
26 which any party to the merger is organized, including, if an
27 unincorporated association is a party to the merger, Section 18370,
28 or if a domestic limited partnership is a party to the merger,
29 subdivision (a) of Section 15911.12, if a domestic general
30 partnership is a party to the merger, subdivision (a) of Section
31 16911, or, if a domestic limited liability company is a party to the
32 merger, subdivision (a) of Section 17710.12.

33 (6) Any other details or provisions as are desired.

34 (c) Notwithstanding its prior approval, an agreement of merger
35 may be amended prior to the filing of the agreement of merger if
36 the amendment is approved by each constituent corporation in the
37 same manner as the original agreement of merger. If the agreement
38 of merger as so amended and approved is also approved by each
39 of the other parties to the agreement of merger, as so amended it
40 shall then constitute the agreement of merger.

1 (d) The board of a constituent corporation may, in its discretion,
2 abandon a merger, subject to the contractual rights, if any, of third
3 parties, including other parties to the agreement of merger, without
4 further approval by the members (Section 5034) or other persons,
5 at any time before the merger is effective.

6 (e) Each constituent corporation shall sign the agreement of
7 merger by its chairperson of the board, president or a vice president,
8 and also by its secretary or an assistant secretary acting on behalf
9 of their respective corporations.

10 (f) After required approvals of the merger by each constituent
11 corporation and each other party to the merger, the surviving party
12 shall file a copy of the agreement of merger with an officers'
13 certificate of each constituent domestic and foreign corporation
14 attached stating the total number of outstanding shares or
15 membership interests of each class, if any, entitled to vote on the
16 merger (and identifying any other person or persons whose
17 approval is required), that the agreement of merger in the form
18 attached or its principal terms, as required, were approved by that
19 corporation by a vote of a number of shares or membership
20 interests of each class entitled to vote, if any, which equaled or
21 exceeded the vote required, specifying each class entitled to vote
22 and the percentage vote required of each class, and, if applicable,
23 by that other person or persons whose approval is required.

24 If equity securities of a parent party (Section 5064.5) are to be
25 issued in the merger, the officers' certificate or certificate of merger
26 of the controlled party shall state either that no vote of the
27 shareholders of the parent party was required or that the required
28 vote was obtained. The merger and any amendment of the articles
29 of the surviving corporation, if applicable, contained in the
30 agreement of merger shall be effective upon the filing of the
31 agreement of merger, subject to the provisions of subdivision (h).
32 If a domestic reciprocal insurer organized after 1974 to provide
33 medical malpractice insurance is a party to the merger, the
34 agreement of merger or certificate of merger shall not be filed until
35 there has been filed the certificate issued by the Insurance
36 Commissioner approving the merger pursuant to Section 1555 of
37 the Insurance Code.

38 In lieu of an officers' certificate, a certificate of merger, on a
39 form prescribed by the Secretary of State, shall be filed for each
40 constituent other business entity. The certificate of merger shall

1 be executed and acknowledged by each domestic constituent
2 limited liability company by all of the managers of the limited
3 liability company (unless a lesser number is specified in its articles
4 of organization or operating agreement) and by each domestic
5 constituent limited partnership by all general partners (unless a
6 lesser number is provided in its certificate of limited partnership
7 or partnership agreement) and by each domestic constituent general
8 partnership by two partners (unless a lesser number is provided in
9 its partnership agreement) and by each foreign constituent limited
10 liability company by one or more managers and by each foreign
11 constituent general partnership or foreign constituent limited
12 partnership by one or more general partners, and by each
13 constituent reciprocal insurer by the chairperson of the board,
14 president, or vice president, and also by the secretary or assistant
15 secretary, or, if a constituent reciprocal insurer has not appointed
16 such officers, by the chairperson of the board, president, or vice
17 president, and also by the secretary or assistant secretary of the
18 constituent reciprocal insurer's attorney-in-fact, and by each other
19 party to the merger by those persons required or authorized to
20 execute the certificate of merger by the laws under which that party
21 is organized, specifying for such party the provision of law or other
22 basis for the authority of the signing persons.

23 The certificate of merger shall set forth, if a vote of the
24 shareholders, members, partners, or other holders of interests of a
25 constituent other business entity was required, a statement setting
26 forth the total number of outstanding interests of each class entitled
27 to vote on the merger and that the agreement of merger or its
28 principal terms, as required, were approved by a vote of the number
29 of interests of each class which equaled or exceeded the vote
30 required, specifying each class entitled to vote and the percentage
31 vote required of each class, and any other information required to
32 be set forth under the laws under which the constituent other
33 business entity is organized, including, if a domestic limited
34 partnership is a party to the merger, subdivision (a) of Section
35 15911.14, if a domestic general partnership is a party to the merger,
36 subdivision (b) of Section 16915, and, if a domestic limited liability
37 company is a party to the merger, subdivision (a) of Section
38 17710.14. The certificate of merger for each constituent foreign
39 other business entity, if any, shall also set forth the statutory or
40 other basis under which that foreign other business entity is

1 authorized by the laws under which it is organized to effect the
2 merger.

3 The Secretary of State may certify a copy of the agreement of
4 merger separate from the officers' certificates and certificates of
5 merger attached thereto.

6 (g) A copy of an agreement of merger certified on or after the
7 effective date by an official having custody thereof has the same
8 force in evidence as the original and, except as against the state,
9 is conclusive evidence of the performance of all conditions
10 precedent to the merger, the existence on the effective date of the
11 surviving party to the merger, the performance of the conditions
12 necessary to the adoption of any amendment to the articles, if
13 applicable, contained in the agreement of merger, and the merger
14 of the constituent corporations, either by themselves or together
15 with other constituent parties, into the surviving party to the
16 merger.

17 (h) (1) The merger of domestic corporations with foreign
18 corporations or foreign other business entities in a merger in which
19 one or more other business entities is a party shall comply with
20 subdivisions (a) and (f) and this subdivision.

21 (2) Subject to subdivision (c) of Section 5008 and paragraph
22 (3), the merger shall be effective as to each domestic constituent
23 corporation and domestic constituent other business entity upon
24 filing of the agreement of merger with attachments as provided in
25 subdivision (f).

26 (3) If the surviving party is a foreign corporation or foreign
27 other business entity, except as provided in paragraph (4), the
28 merger shall be effective as to any domestic disappearing
29 corporation as of the time of effectiveness in the foreign jurisdiction
30 upon the filing in this state of a copy of the agreement of merger
31 with an officers' certificate of the surviving foreign corporation
32 and of each constituent foreign and domestic corporation and a
33 certificate of merger of each constituent other business entity
34 attached, which officers' certificates and certificates of merger
35 shall conform to the requirements of subdivision (f).

36 If one or more domestic other business entities is a disappearing
37 party in a merger pursuant to this subdivision in which a foreign
38 other business entity is the surviving entity, a certificate of merger
39 required by the laws under which each domestic other business
40 entity is organized, including subdivision (a) of Section 15911.14,

subdivision (b) of Section 16915, or subdivision (a) of Section 17710.14, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (f) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (f) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 12. Section 8019.1 of the Corporations Code is amended to read:

8019.1. (a) Subject to the provisions of Section 8010, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations, foreign corporations (Section 5053), and foreign business corporations (Section 5052) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

1 (b) Each corporation and each other party which desires to merge
2 shall approve an agreement of merger. The board and the members
3 (Section 5034) of each corporation which desires to merge, and
4 each other person or persons, if any, whose approval of an
5 amendment of the articles of that corporation is required by the
6 articles or bylaws shall approve the agreement of merger. The
7 agreement of merger shall be approved on behalf of each other
8 constituent party by those persons authorized or required to approve
9 the merger by the laws under which it is organized. The parties
10 desiring to merge shall be parties to the agreement of merger and
11 other persons, including a parent party (Section 5064.5), may be
12 parties to the agreement of merger. The agreement of merger shall
13 state all of the following:

14 (1) The terms and conditions of the merger.

15 (2) The name and place of incorporation or organization of each
16 party and the identity of the surviving party.

17 (3) The amendments, if any, subject to Sections 7810 and 7816,
18 to the articles of the surviving corporation, if applicable, to be
19 effected by the merger. The name of the surviving corporation
20 may be, subject to subdivisions (b) and (c) of Section 7122, the
21 same as or similar to the name of a disappearing party to the
22 merger.

23 (4) The manner, if any, of converting the memberships or
24 securities of each of the constituent corporations into shares,
25 memberships, interests, or other securities of the surviving party;
26 and, if any memberships or securities of any of the constituent
27 corporations are not to be converted solely into shares,
28 memberships, interests, or other securities of the surviving party,
29 cash, rights, securities, or other property which the holders of those
30 memberships or securities are to receive in exchange for the
31 memberships or securities, which cash, rights, securities, or other
32 property may be in addition to or in lieu of shares, memberships,
33 interests, or other securities of the surviving party.

34 (5) Any other details or provisions required by the laws under
35 which any party to the merger is organized, including, if an
36 unincorporated association is a party to the merger, Section 18370,
37 or if a domestic limited partnership is a party to the merger,
38 subdivision (a) of Section 15911.12, or, if a domestic general
39 partnership is a party to the merger, subdivision (a) of Section

1 16911, or, if a domestic limited liability company is a party to the
2 merger, subdivision (a) of Section 17710.12.

3 (6) Any other details or provisions as are desired.

4 (c) Each membership of the same class of any constituent
5 corporation (other than the cancellation of memberships held by
6 a party to the merger or its parent or a wholly owned subsidiary
7 of either in another constituent corporation) shall be treated equally
8 with respect to any distribution of cash, property, rights, or
9 securities unless (i) all members of the class consent or (ii) the
10 commissioner has approved the terms and conditions of the
11 transaction and the fairness of those terms pursuant to Section
12 25142.

13 (d) Notwithstanding its prior approval, an agreement of merger
14 may be amended prior to the filing of the agreement of merger if
15 the amendment is approved by each constituent corporation in the
16 same manner as the original agreement of merger. If the agreement
17 of merger as so amended and approved is also approved by each
18 of the other parties to the agreement of merger, as so amended it
19 shall then constitute the agreement of merger.

20 (e) The board of a constituent corporation may, in its discretion,
21 abandon a merger, subject to the contractual rights, if any, of third
22 parties, including other parties to the agreement of merger, without
23 further approval by the members (Section 5034) or other persons,
24 at any time before the merger is effective.

25 (f) Each constituent corporation shall sign the agreement of
26 merger by its chairperson of the board, president, or a vice president
27 and also by its secretary or an assistant secretary acting on behalf
28 of their respective corporations.

29 (g) After required approvals of the merger by each constituent
30 corporation and each other party to the merger, the surviving party
31 shall file a copy of the agreement of merger with an officers'
32 certificate of each constituent domestic corporation, foreign
33 corporation, and foreign business corporation attached stating the
34 total number of outstanding shares or membership interests of each
35 class entitled to vote on the merger (and identifying any other
36 person or persons whose approval is required), that the agreement
37 of merger in the form attached or its principal terms, as required,
38 were approved by that corporation by a vote of a number of shares
39 or membership interests of each class which equaled or exceeded
40 the vote required, specifying each class entitled to vote required

1 of each class, and, if applicable, by such other person or persons
2 whose approval is required.

3 If equity securities of a parent party (Section 5064.5) are to be
4 issued in the merger, the officers' certificate or certificate of merger
5 of the controlled party shall state either that no vote of the
6 shareholders of the parent party was required or that the required
7 vote was obtained. The merger and any amendment of the articles
8 of the surviving corporation, if applicable, contained in the
9 agreement of merger shall be effective upon the filing of the
10 agreement of merger, subject to the provisions of subdivision (i).
11 If a domestic reciprocal insurer organized after 1974 to provide
12 medical malpractice insurance is a party to the merger, the
13 agreement of merger or certificate of merger shall not be filed until
14 there has been filed the certificate issued by the Insurance
15 Commissioner approving the merger pursuant to Section 1555 of
16 the Insurance Code.

17 In lieu of an officers' certificate, a certificate of merger, on a
18 form prescribed by the Secretary of State, shall be filed for each
19 constituent other business entity. The certificate of merger shall
20 be executed and acknowledged by each domestic constituent
21 limited liability company by all of the managers of the limited
22 liability company (unless a lesser number is specified in its articles
23 of organization or operating agreement) and by each domestic
24 constituent limited partnership by all general partners (unless a
25 lesser number is provided in its certificate of limited partnership
26 or partnership agreement) and by each domestic constituent general
27 partnership by two partners (unless a lesser number is provided in
28 its partnership agreement) and by each foreign constituent limited
29 liability company by one or more managers and by each foreign
30 constituent general partnership or foreign constituent limited
31 partnership by one or more general partners, and by each
32 constituent reciprocal insurer by the chairperson of the board,
33 president, or vice president, and by the secretary or assistant
34 secretary, or, if a constituent reciprocal insurer has not appointed
35 such officers, by the chairperson of the board, president, or vice
36 president, and by the secretary or assistant secretary of the
37 constituent reciprocal insurer's attorney-in-fact, and by each other
38 party to the merger by those persons required or authorized to
39 execute the certificate of merger by the laws under which that party

1 is organized, specifying for such party the provision of law or other
2 basis for the authority of the signing persons.

3 The certificate of merger shall set forth, if a vote of the
4 shareholders, members, partners, or other holders of interests of a
5 constituent other business entity was required, a statement setting
6 forth the total number of outstanding interests of each class entitled
7 to vote on the merger and that the principal terms of the agreement
8 of merger were approved by a vote of the number of interests of
9 each class which equaled or exceeded the vote required, specifying
10 each class entitled to vote and the percentage vote required of each
11 class, and any other information required to be set forth under the
12 laws under which the constituent other business entity is organized,
13 including, if a domestic limited partnership is a party to the merger,
14 subdivision (a) of Section 15911.14, if a domestic general
15 partnership is a party to the merger, subdivision (b) of Section
16 16915 and, if a domestic limited liability company is a party to
17 the merger, subdivision (a) of Section 17710.14. The certificate
18 of merger for each constituent foreign other business entity, if any,
19 shall also set forth the statutory or other basis under which that
20 foreign other business entity is authorized by the laws under which
21 it is organized to effect the merger.

22 The Secretary of State may certify a copy of the agreement of
23 merger separate from the officers' certificates and certificates of
24 merger attached thereto.

25 (h) A copy of an agreement of merger certified on or after the
26 effective date by an official having custody thereof has the same
27 force in evidence as the original and, except as against the state,
28 is conclusive evidence of the performance of all conditions
29 precedent to the merger, the existence on the effective date of the
30 surviving party to the merger, the performance of the conditions
31 necessary to the adoption of any amendment to the articles, if
32 applicable, contained in the agreement of merger, and of the merger
33 of the constituent corporations, either by themselves or together
34 with other constituent parties, into the surviving party to the
35 merger.

36 (i) (1) The merger of domestic corporations with foreign
37 corporations or foreign other business entities in a merger in which
38 one or more other business entities is a party shall comply with
39 subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign business corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation or foreign business corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17710.14, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other

1 business entity as of the date of filing in this state or, if later, the
2 effective date of the merger, without the necessity of the filing of
3 a certificate of cancellation.

4 SEC. 13. Section 12540.1 of the Corporations Code is amended
5 to read:

6 12540.1. (a) Any one or more corporations may merge with
7 one or more other business entities (Section 12242.5). Subject to
8 the provisions of Section 12530, one or more other domestic
9 corporations or foreign corporations (Section 12237) may be parties
10 to the merger.

11 Notwithstanding the provisions of this section, such a merger
12 may be effected only if:

13 (1) In a merger in which a domestic corporation or domestic
14 other business entity is a party, it is authorized by the laws under
15 which it is organized to effect the merger.

16 (2) In a merger in which a foreign corporation is a party, it is
17 authorized by the laws under which it is organized to effect the
18 merger.

19 (3) In a merger in which a foreign other business entity is a
20 party, it is authorized by the laws under which it is organized to
21 effect the merger.

22 (b) Each corporation, other domestic corporation, foreign
23 corporation, and other business entity which desires to merge shall
24 approve an agreement of merger. The board and the members of
25 each corporation which desires to merge shall approve (Sections
26 12222 and 12224) the agreement of merger. The agreement of
27 merger shall be approved on behalf of each other constituent party
28 by those persons authorized or required to approve the merger by
29 the laws under which it is organized.

30 The parties desiring to merge shall be parties to the agreement
31 of merger and other persons, including a parent party (Section
32 12242.6), may be parties to the agreement of merger. The
33 agreement of merger shall state all of the following:

34 (1) The terms and conditions of the merger.

35 (2) The name and place of incorporation or organization of each
36 party and the identity of the surviving party.

37 (3) The amendments, if any, subject to Sections 12500 and
38 12507, to the articles of the surviving corporation, if applicable,
39 to be effected by the merger. The name of the surviving corporation
40 may be, subject to subdivisions (b) and (c) of Section 12302, the

1 same as, or similar to, the name of a disappearing party to the
2 merger.

3 (4) The manner, if any, of converting the memberships or
4 securities of each of the constituent corporations into shares,
5 memberships, interests, or other securities of the surviving party
6 and, if any memberships or securities of any of the constituent
7 corporations are not to be converted solely into shares,
8 memberships, interests, or other securities of the surviving party,
9 the cash, rights, securities, or other property which the holders of
10 those memberships or securities are to receive in exchange for the
11 memberships or securities, which cash, rights, securities, or other
12 property may be in addition to or in lieu of shares, memberships,
13 interests, or other securities of the surviving party.

14 (5) Any other details or provisions required by the laws under
15 which any party to the merger is organized, including, if a domestic
16 limited partnership is a party to the merger, subdivision (a) of
17 Section 15911.12, or, if a domestic general partnership is a party
18 to the merger, subdivision (a) of Section 16911, or, if a domestic
19 limited liability company is a party to the merger, subdivision (a)
20 of Section 17710.12.

21 (6) Any other details or provisions as are desired.

22 (c) Each membership of the same class of any constituent
23 corporation (other than the cancellation of memberships held by
24 a party to the merger or its parent or a wholly owned subsidiary
25 of either in another constituent corporation) shall be treated equally
26 with respect to any distribution of cash, property, rights, or
27 securities unless (i) all members of the class consent or (ii) the
28 commissioner has approved the terms and conditions of the
29 transaction and the fairness of those terms pursuant to Section
30 25142.

31 (d) Notwithstanding its prior approval, an agreement of merger
32 may be amended prior to the filing of the agreement of merger if
33 the amendment is approved by each constituent corporation in the
34 same manner as the original agreement of merger. If the agreement
35 of merger as so amended and approved is also approved by each
36 of the other parties to the agreement of merger, as so amended it
37 shall then constitute the agreement of merger.

38 (e) The board of a constituent corporation may, in its discretion,
39 abandon a merger, subject to the contractual rights, if any, of third
40 parties, including other parties to the agreement of merger, without

1 further approval by the members (Section 12224), at any time
2 before the merger is effective.

3 (f) Each constituent corporation shall sign the agreement of
4 merger by its chairperson of the board, president, or a vice president
5 and also by its secretary or an assistant secretary acting on behalf
6 of their respective corporations.

7 (g) After required approvals of the merger by each constituent
8 corporation and each other party to the merger, the surviving party
9 shall file a copy of the agreement of merger with an officers'
10 certificate of each constituent domestic and foreign corporation
11 attached stating the total number of outstanding shares or
12 membership interests of each class entitled to vote on the merger
13 (and identifying any other person or persons whose approval is
14 required), that the agreement of merger in the form attached or its
15 principal terms, as required, were approved by that corporation by
16 a vote of a number of shares or membership interests of each class
17 which equaled or exceeded the vote required, specifying each class
18 entitled to vote and the percentage vote required of each class,
19 and, if applicable, by that other person or persons whose approval
20 is required.

21 If equity securities of a parent party (Section 12242.6) are to be
22 issued in the merger, the officers' certificate or certificate of merger
23 of the controlled party shall state either that no vote of the
24 shareholders of the parent party was required or that the required
25 vote was obtained. The merger and any amendment of the articles
26 of the surviving corporation, if applicable, contained in the
27 agreement of merger shall be effective upon the filing of the
28 agreement of merger, subject to the provisions of subdivision (i).
29 If a domestic reciprocal insurer organized after 1974 to provide
30 medical malpractice insurance is a party to the merger, the
31 agreement of merger or certificate of merger shall not be filed until
32 there has been filed the certificate issued by the Insurance
33 Commissioner approving the merger pursuant to Section 1555 of
34 the Insurance Code.

35 In lieu of an officers' certificate, a certificate of merger, on a
36 form prescribed by the Secretary of State, shall be filed for each
37 constituent other business entity. The certificate of merger shall
38 be executed and acknowledged by each domestic constituent
39 limited liability company by all of the managers of the limited
40 liability company (unless a lesser number is specified in its articles

1 of organization or operating agreement) and by each domestic
2 constituent limited partnership by all general partners (unless a
3 lesser number is provided in its certificate of limited partnership
4 or partnership agreement) and by each domestic constituent general
5 partnership by two partners (unless a lesser number is provided in
6 its partnership agreement) and by each foreign constituent general
7 partnership or foreign constituent limited liability company by one
8 or more managers and by each foreign constituent limited
9 partnership by one or more general partners, and by each
10 constituent reciprocal insurer by the chairperson of the board,
11 president, or vice president, and by the secretary or assistant
12 secretary, or, if a constituent reciprocal insurer has not appointed
13 such officers, by the chairperson of the board, president, or vice
14 president, and by the secretary or assistant secretary of the
15 constituent reciprocal insurer's attorney-in-fact, and by each other
16 party to the merger by those persons required or authorized to
17 execute the certificate of merger by the laws under which that party
18 is organized, specifying for such party the provision of law or other
19 basis for the authority of the signing persons.

20 The certificate of merger shall set forth, if a vote of the
21 shareholders, members, partners, or other holders of interests of
22 the constituent other business entity was required, a statement
23 setting forth the total number of outstanding interests of each class
24 entitled to vote on the merger and that the agreement of merger or
25 its principal terms, as required, were approved by a vote of the
26 number of interests of each class which equaled or exceeded the
27 vote required, specifying each class entitled to vote and the
28 percentage vote required of each class, and any other information
29 required to be set forth under the laws under which the constituent
30 other business entity is organized, including, if a domestic limited
31 partnership is a party to the merger, subdivision (a) of Section
32 15911.14, if a domestic general partnership is a party to the merger,
33 subdivision (b) of Section 16915, and, if a domestic limited liability
34 company is a party to the merger, subdivision (a) of Section
35 17710.14. The certificate of merger for each constituent foreign
36 other business entity, if any, shall also set forth the statutory or
37 other basis under which that foreign other business entity is
38 authorized by the laws under which it is organized to effect the
39 merger.

1 The Secretary of State may certify a copy of the agreement of
2 merger separate from the officers' certificates and certificates of
3 merger attached thereto.

4 (h) A copy of an agreement of merger certified on or after the
5 effective date by an official having custody thereof has the same
6 force in evidence as the original and, except as against the state,
7 is conclusive evidence of the performance of all conditions
8 precedent to the merger, the existence on the effective date of the
9 surviving party to the merger, the performance of the conditions
10 necessary to the adoption of any amendment to the articles, if
11 applicable, contained in the agreement of merger, and of the merger
12 of the constituent corporations, either by themselves or together
13 with other constituent parties, into the surviving party to the
14 merger.

15 (i) (1) The merger of domestic corporations with foreign
16 corporations or foreign other business entities in a merger in which
17 one or more other business entities is a party shall comply with
18 subdivisions (a) and (g) and this subdivision.

19 (2) Subject to subdivision (c) of Section 12214 and paragraph
20 (3), the merger shall be effective as to each domestic constituent
21 corporation and domestic constituent other business entity upon
22 filing of the agreement of merger with attachments as provided in
23 subdivision (g).

24 (3) If the surviving party is a foreign corporation or foreign
25 other business entity, except as provided in paragraph (4), the
26 merger shall be effective as to any domestic disappearing
27 corporation as of the time of effectiveness in the foreign jurisdiction
28 upon the filing in this state of a copy of the agreement of merger
29 with an officers' certificate of the surviving foreign corporation
30 and of each constituent foreign and domestic corporation and a
31 certificate of merger of each constituent other business entity
32 attached, which officers' certificates and certificates of merger
33 shall conform to the requirements of subdivision (g).

34 If one or more domestic other business entities is a disappearing
35 party in a merger pursuant to this subdivision in which a foreign
36 other business entity is the surviving entity, a certificate of merger
37 required by the laws under which each domestic other business
38 entity is organized, including subdivision (a) of Section 15911.14,
39 subdivision (b) of Section 16915 or subdivision (a) of Section

1 17710.14, if applicable, shall also be filed at the same time as the
2 filing of the agreement of merger.

3 (4) If the date of the filing in this state pursuant to this
4 subdivision is more than six months after the time of the
5 effectiveness in the foreign jurisdiction, or if the powers of a
6 domestic disappearing corporation are suspended at the time of
7 effectiveness in the foreign jurisdiction, the merger shall be
8 effective as to the domestic disappearing corporation as of the date
9 of filing in this state.

10 (5) Each foreign disappearing corporation that is qualified for
11 the transaction of intrastate business shall automatically by the
12 filing pursuant to subdivision (g) surrender its right to transact
13 intrastate business as of the date of filing in this state or, if later,
14 the effective date of the merger. With respect to each foreign
15 disappearing other business entity previously registered for the
16 transaction of intrastate business in this state, the filing of the
17 agreement of merger pursuant to subdivision (g) automatically has
18 the effect of a cancellation of registration for that foreign other
19 business entity without the necessity of the filing of a certificate
20 of cancellation.

21 SEC. 14. Section 15911.03 of the Corporations Code is
22 amended to read:

23 15911.03. (a) A limited partnership that desires to convert to
24 an other business entity or a foreign other business entity or a
25 foreign limited partnership shall approve a plan of conversion. The
26 plan of conversion shall state all of the following:

27 (1) The terms and conditions of the conversion.

28 (2) The place of the organization of the converted entity and of
29 the converting limited partnership and the name of the converted
30 entity after conversion.

31 (3) The manner of converting the limited and general partnership
32 interests of each of the partners into shares of, securities of, or
33 interests in, the converted entity.

34 (4) The provisions of the governing documents for the converted
35 entity, including the partnership agreement, limited liability
36 company articles of organization and operating agreement, or
37 articles or certificate of incorporation if the converted entity is a
38 corporation, to which the holders of interests in the converted entity
39 are to be bound.

1 (5) Any other details or provisions that are required by the laws
2 under which the converted entity is organized, or that are desired
3 by the parties.

4 (b) The plan of conversion shall be approved by all general
5 partners of the converting limited partnership and by a majority
6 in interest of each class of limited partners of the converting limited
7 partnership, unless a greater or lesser approval is required by the
8 partnership agreement of the converting limited partnership.
9 However, if the limited partners of the limited partnership would
10 become personally liable for any obligations of the converted entity
11 as a result of the conversion, the plan of conversion shall be
12 approved by all of the limited partners of the converting limited
13 partnership, unless the plan of conversion provides that all limited
14 partners will have dissenters' rights as provided in Article 11.5
15 (commencing with Section 15911.20).

16 (c) Upon the effectiveness of the conversion, all partners of the
17 converting limited partnership, except those that exercise
18 dissenters' rights as provided in Article 11.5 (commencing with
19 Section 15911.20), shall be deemed parties to any governing
20 documents for the converted entity adopted as part of the plan of
21 conversion, irrespective of whether or not the partner has executed
22 the plan of conversion or the governing documents for the
23 converted entity. Any adoption of governing documents made
24 pursuant thereto shall be effective at the effective time or date of
25 the conversion.

26 (d) Notwithstanding its prior approval, a plan of conversion
27 may be amended before the conversion takes effect if the
28 amendment is approved by all general partners of the converting
29 limited partnership and, if the amendment changes any of the
30 principal terms of the plan of conversion, the amendment is
31 approved by the limited partners of the converting limited
32 partnership in the same manner and to the same extent as required
33 for the approval of the original plan of conversion.

34 (e) The general partners of a converting limited partnership
35 may, by unanimous approval at any time before the conversion is
36 effective, in their discretion, abandon a conversion, without further
37 approval by the limited partners, subject to the contractual rights
38 of third parties other than limited partners.

39 (f) The converted entity shall keep the plan of conversion at the
40 principal place of business of the converted entity if the converted

1 entity is a domestic partnership or foreign other business entity,
2 at the principal executive office of, or registrar or transfer agent
3 of, the converted entity, if the converted entity is a domestic
4 corporation, or at the office at which records are to be kept under
5 Section 17701.13 if the converted entity is a domestic limited
6 liability company. Upon the request of a partner of a converting
7 limited partnership, the authorized person on behalf of the
8 converted entity shall promptly deliver to the partner or the holder
9 of shares, interests, or other securities, at the expense of the
10 converted entity, a copy of the plan of conversion. A waiver by a
11 partner of the rights provided in this subdivision shall be
12 unenforceable.

13 SEC. 15. Section 15911.08 of the Corporations Code is
14 amended to read:

15 15911.08. (a) An other business entity or a foreign other
16 business entity or a foreign limited partnership may be converted
17 to a domestic limited partnership pursuant to this article only if
18 the converting entity is authorized by the laws under which it is
19 organized to effect the conversion.

20 (b) An other business entity or a foreign other business entity
21 or a foreign limited partnership that desires to convert into a
22 domestic limited partnership shall approve a plan of conversion
23 or another instrument as is required to be approved to effect the
24 conversion pursuant to the laws under which that entity is
25 organized.

26 (c) The conversion of an other business entity or a foreign other
27 business entity or a foreign limited partnership into a domestic
28 limited partnership shall be approved by the number or percentage
29 of the partners, members, shareholders, or holders of interest of
30 the converting entity as is required by the laws under which that
31 entity is organized, or a greater or lesser percentage, subject to
32 applicable laws, as set forth in the converting entity's partnership
33 agreement, articles of organization, operating agreement, articles
34 or certificate of incorporation, or other governing document.

35 (d) The conversion by an other business entity or a foreign other
36 business entity or a foreign limited partnership into a domestic
37 limited partnership shall be effective under this article at the time
38 the conversion is effective under the laws under which the
39 converting entity is organized, as long as a certificate of limited
40 partnership containing a statement of conversion has been filed

1 with the Secretary of State. If the converting entity's governing
2 law is silent as to the effectiveness of the conversion, the
3 conversion shall be effective upon the completion of all acts
4 required under this title to form a limited partnership.

5 (e) The filing with the Secretary of State of a certificate of
6 conversion or a certificate of limited partnership containing a
7 statement of conversion pursuant to subdivision (a) shall have the
8 effect of the filing of a certificate of cancellation by the converting
9 foreign limited partnership or foreign limited liability company
10 and no converting foreign limited partnership or foreign limited
11 liability company that has made the filing is required to file a
12 certificate of cancellation under Section 15902.03 or 17708.08 as
13 a result of that conversion. If a converting other business entity is
14 a foreign corporation qualified to transact business in this state,
15 the foreign corporation shall, by virtue of the filing, automatically
16 surrender its right to transact intrastate business.

17 SEC. 16. Section 16903 of the Corporations Code is amended
18 to read:

19 16903. (a) A partnership that desires to convert to a domestic
20 or foreign other business entity shall approve a plan of conversion.
21 The plan of conversion shall state the following:

22 (1) The terms and conditions of the conversion.

23 (2) The place of the organization of the converted entity and of
24 the converting partnership and the name of the converted entity
25 after conversion, if different from that of the converting partnership.

26 (3) The manner of converting the partnership interests of each
27 of the partners into shares of, securities of, or interests in the
28 converted entity.

29 (4) The provisions of the governing documents for the converted
30 entity, including the limited partnership agreement, limited liability
31 company articles of organization and operating agreement, or
32 articles or certificate of incorporation if the converted entity is a
33 corporation, to which the holders of interest in the converted entity
34 are to be bound.

35 (5) Any other details or provisions as are required by laws under
36 which the converted entity is organized.

37 (6) Any other details or provisions that are desired.

38 (b) The plan of conversion shall be approved by that number
39 or percentage of partners required by the partnership agreement
40 to approve a conversion of the partnership as set forth in the

1 partnership agreement. If the partnership agreement fails to specify
2 the required partner approval for a conversion of the partnership,
3 the plan of conversion shall be approved by that number or
4 percentage of partners required by the partnership agreement to
5 approve an amendment to the partnership agreement unless the
6 conversion effects a change for which the partnership agreement
7 requires a greater number or percentage of partners than that
8 required to amend the partnership agreement, in which case the
9 plan of conversion shall be approved by that greater number or
10 percentage. If the partnership agreement fails to specify the vote
11 required to amend the partnership agreement, the plan of
12 conversion shall be approved by all partners.

13 (c) If the partnership is converting into a limited partnership, in
14 addition to the approval of the partners as set forth in subdivision
15 (b), the plan of conversion shall be approved by all partners who
16 will become general partners of the converted limited partnership
17 pursuant to the plan of conversion.

18 (d) All partners of the converting partnership except those that
19 dissociate upon effectiveness of the conversion pursuant to
20 subdivision (e) of Section 16909 shall be deemed parties to any
21 partnership or operating agreement, articles or certificate of
22 incorporation, or organic document for the converted entity adopted
23 as part of the plan of conversion, regardless of whether that partner
24 has executed the plan of conversion or the operating agreement,
25 articles or certificate of incorporation, partnership agreement, or
26 other organic document for the converted entity. Any adoption of
27 a new partnership or operating agreement, articles or certificate
28 of incorporation, or other organic document made pursuant to the
29 foregoing sentence shall be effective at the effective time or date
30 of the conversion.

31 (e) Notwithstanding its prior approval, a plan of conversion may
32 be amended before the conversion takes effect if the amendment
33 is approved by the partnership in the same manner, and by the
34 same number or percentage of partners, as was required for
35 approval of the original plan of conversion.

36 (f) The partners of a converting partnership may, at any time
37 before the conversion is effective, in their discretion, abandon a
38 conversion, without further approval by the partners, in the same
39 manner, and by the same number or percentage of partners, as was
40 required for approval of the original plan of conversion at any time

1 before the conversion is effective, subject to the contractual rights
2 of third parties.

3 (g) The converted entity shall keep the plan of conversion at:
4 (1) the principal place of business of the converted entity, if the
5 converted entity is a foreign other business entity or a corporation;
6 or (2) the office at which records are to be kept under Section
7 15614 or 15901.14 if the converted entity is a domestic limited
8 partnership, or at the office at which records are to be kept under
9 Section 17701.13 if the converted entity is a domestic limited
10 liability company. Upon the request of a partner of a converting
11 partnership, the authorized person on behalf of the converted entity
12 shall promptly deliver to the partner or the holder of interests or
13 other securities, at the expense of the converted entity, a copy of
14 the plan of conversion. A waiver by a partner of the rights provided
15 in this subdivision shall be unenforceable.

16 SEC. 17. Section 16908 of the Corporations Code is amended
17 to read:

18 16908. (a) A domestic limited partnership, limited liability
19 company, or corporation, or a foreign other business entity may
20 be converted to a domestic partnership pursuant to this article, but
21 only if the converting entity is authorized by the laws under which
22 it is organized to effect the conversion.

23 (b) An entity that desires to convert into a domestic partnership
24 shall approve a plan of conversion or the instrument that is required
25 to be approved to effect the conversion pursuant to the laws under
26 which the entity is organized.

27 (c) The conversion of a domestic limited partnership, limited
28 liability company, or corporation, or foreign other business entity
29 shall be approved by the number or percentage of the partners,
30 members, shareholders, or holders of interest of the converting
31 entity as is required by the law under which the entity is organized,
32 or a greater or lesser percentage (subject to applicable laws) as set
33 forth in the limited partnership agreement, articles of organization,
34 operating agreement, or articles or certificate of organization, or
35 other governing document for the converting entity.

36 (d) The conversion by a domestic limited partnership, limited
37 liability company, or corporation, or a foreign other business entity
38 into a partnership shall be effective under this article at the time
39 that the conversion is effective under the laws under which the
40 converting entity is organized.

(e) The filing with the Secretary of State of a certificate of conversion or a statement of partnership authority containing a statement of conversion pursuant to subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting foreign limited partnership or foreign limited liability company, and no converting foreign limited partnership or foreign limited liability company that has made the filing is required to file a certificate of cancellation under Section 15909.07 or 17708.08 as a result of that conversion. If a converting other business entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 18. Section 16911 of the Corporations Code is amended to read:

16911. (a) Each partnership and other business entity which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by the number or percentage of partners specified for merger in the partnership agreement of the constituent partnership. If the partnership agreement fails to specify the required partner approval for merger of the constituent partnership, then the agreement of merger shall be approved by that number or percentage of partners specified by the partnership agreement to approve an amendment to the partnership agreement. However, if the merger effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, then the merger shall be approved by that greater number or percentage. If the partnership agreement contains no provision specifying the vote required to amend the partnership agreement, then the agreement of merger must be approved by all the partners. The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons may be parties to the agreement of merger. The agreement of merger shall state all of the following:

- (1) The terms and conditions of the merger.
- (2) The name and place of organization of the surviving partnership or surviving other business entity, and of each disappearing partnership and disappearing other business entity, and the agreement of merger may change the name of the surviving

1 partnership, which new name may be the same as, or similar to,
2 the name of a disappearing partnership.

3 (3) The manner of converting the partnership interests of each
4 of the constituent partnerships into interests or other securities of
5 the surviving partnership or surviving other business entity, and
6 if partnership interests of any of the constituent partnerships are
7 not to be converted solely into interest or other securities of the
8 surviving partnership or surviving other business entity, the cash,
9 property, rights, interests, or securities which the holders of the
10 partnership interest are to receive in exchange for the partnership
11 interests, which cash, property, rights, interests, or securities may
12 be in addition to or in lieu of interests or other securities of the
13 surviving partnership or surviving other business entity, or that
14 the partnership interests are canceled without consideration.

15 (4) Any other details or provisions as are required by the laws
16 under which any constituent other business entity is organized.

17 (5) Any other details or provisions that are desired, including,
18 without limitation, a provision for the treatment of fractional
19 partnership interests.

20 (b) If the partnership is merging into a limited partnership, then
21 in addition to the approval of the partners as set forth under
22 subdivision (a), the agreement of merger must be approved by all
23 partners who will become general partners of the surviving limited
24 partnership upon the effectiveness of the merger.

25 (c) Notwithstanding its prior approval, an agreement of merger
26 may be amended before the merger takes effect if the amendment
27 is approved by the partners of each constituent partnership, in the
28 same manner as required for approval of the original agreement
29 of merger, and by each of the constituent other business entities.

30 (d) The partners of a constituent partnership may in their
31 discretion, abandon a merger, subject to the contractual rights, if
32 any, of third parties, including other constituent partnerships and
33 constituent other business entities, if the abandonment is approved
34 by the partners of the constituent partnership in the same manner
35 as required for approval of the original agreement of merger.

36 (e) An agreement of merger approved in accordance with
37 subdivision (a) may (1) effect any amendment to the partnership
38 agreement of any domestic constituent partnership or (2) effect
39 the adoption of a new partnership agreement for a domestic
40 constituent partnership if it is the surviving partnership in the

1 merger. Any amendment to a partnership agreement or adoption
2 of a new partnership agreement made pursuant to the foregoing
3 sentence shall be effective at the effective time or date of the
4 merger.

5 (f) The surviving partnership or surviving other business entity
6 shall keep the agreement of merger at the principal place of
7 business of the surviving entity if the surviving entity is a
8 partnership or a foreign other business entity, at the office referred
9 to in Section 1500 if the surviving entity is a domestic corporation,
10 at the office referred to in subdivision (a) of Section 15901.14 if
11 the surviving entity is a domestic limited partnership or at the
12 office referred to in Section 17701.13 if the surviving entity is a
13 domestic limited liability company and, upon the request of a
14 partner of a constituent partnership or a holder of interests or other
15 securities of a constituent other business entity, the authorized
16 person on behalf of the partnership or the surviving other business
17 entity shall promptly deliver to the partner or the holder of interests
18 or other securities, at the expense of the surviving partnership or
19 surviving other business entity, a copy of the agreement of merger.
20 A waiver by a partner or holder of interests or other securities of
21 the rights provided in this subdivision shall be unenforceable.

22 SEC. 19. Section 17657 is added to the Corporations Code, to
23 read:

24 17657. (a) This title, or any division, part, chapter, article, or
25 section thereof, may at any time be amended or repealed.

26 (b) This title shall remain in effect only until January 1, 2014,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2014, deletes or extends that date.

29 SEC. 20. Title 2.6 (commencing with Section 17701.01) is
30 added to the Corporations Code, to read:

31
32 TITLE 2.6. CALIFORNIA REVISED UNIFORM LIMITED
33 LIABILITY COMPANY ACT

34
35 Article 1. General Provisions

36
37 17701.01. This title may be cited as the California Revised
38 Uniform Limited Liability Company Act.

39 17701.02. In this title:

1 (a) “Acknowledged” means that an instrument is either of the
2 following:

3 (1) Formally acknowledged as provided in Article 3
4 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
5 4 of Division 2 of the Civil Code.

6 (2) Executed to include substantially the following wording
7 preceding the signature:

8
9 “It is hereby declared that I am the person who executed this
10 instrument which execution is my act and deed.”

11
12 Any certificate of acknowledgment taken without this state
13 before a notary public or a judge or clerk of a court of record
14 having an official seal need not be further authenticated.

15 (b) “Articles of organization” means the articles required by
16 Section 17702.01. The term includes the articles of organization
17 as amended or restated.

18 (c) “Contribution” means any benefit provided by a person to
19 a limited liability company:

20 (1) In order to become a member upon formation of the limited
21 liability company and in accordance with an agreement between
22 or among the persons that have agreed to become the initial
23 members of the limited liability company.

24 (2) In order to become a member after formation of the limited
25 liability company and in accordance with an agreement between
26 the person and the limited liability company.

27 (3) In the person’s capacity as a member and in accordance with
28 the operating agreement or an agreement between the member and
29 the limited liability company.

30 (d) “Debtor in bankruptcy” means a person that is the subject
31 of either of the following:

32 (1) An order for relief under Title 11 of the United States Code
33 or a successor statute of general application.

34 (2) A comparable order under federal, state, or foreign law
35 governing bankruptcy or insolvency, an assignment for the benefit
36 of creditors, or an order appointing a trustee, receiver, or liquidator
37 of the person or of all or substantially all of the person’s property.

38 (e) “Designated office” means either of the following:

39 (1) The office that a limited liability company is required to
40 designate and maintain under Section 17701.13.

1 (2) The principal office of a foreign limited liability company.

2 (f) “Distribution,” except as otherwise provided in subdivision
3 (g) of Section 17704.05, means a transfer of money or other
4 property from a limited liability company to another person on
5 account of a transferable interest.

6 (g) “Domestic” means organized under the laws of this state
7 when used in relation to any limited liability company, other
8 business entity, or person other than a natural person.

9 (h) “Effective,” with respect to a record required or permitted
10 to be delivered to the Secretary of State for filing under this title,
11 means effective under subdivision (c) of Section 17702.05.

12 (i) (1) “Electronic transmission by the limited liability
13 company” means a communication delivered by any of the
14 following means:

15 (A) Facsimile telecommunication or electronic mail when
16 directed to the facsimile number or electronic mail address,
17 respectively, for that recipient on record with the limited liability
18 company.

19 (B) Posting on an electronic message board or network that the
20 limited liability company has designated for those communications,
21 together with a separate notice to the recipient of the posting, which
22 transmission shall be validly delivered upon the later of the posting
23 or delivery of the separate notice thereof.

24 (C) Other means of electronic communication to which both of
25 the following apply:

26 (i) The communication is delivered to a recipient who has
27 provided an unrevoked consent to the use of those means of
28 transmission.

29 (ii) The communication creates a record that is capable of
30 retention, retrieval, and review, and that may thereafter be rendered
31 into clearly legible tangible form. However, an electronic
32 transmission by a limited liability company to an individual
33 member is not authorized unless, in addition to satisfying the
34 requirements of this section, the transmission satisfies the
35 requirements applicable to consumer consent to electronic records
36 as set forth in the federal Electronic Signatures in Global and
37 National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

38 (2) “Electronic transmission to the limited liability company”
39 means a communication delivered by any of the following means:

1 (A) Facsimile telecommunication or electronic mail when
2 directed to the facsimile number or electronic mail address,
3 respectively, that the limited liability company has provided from
4 time to time to members or managers for sending communications
5 to the limited liability company.

6 (B) Posting on an electronic message board or network that the
7 limited liability company has designated for those communications,
8 which transmission shall be validly delivered upon the posting.

9 (C) Other means of electronic communication to which both of
10 the following apply:

11 (i) The limited liability company has placed in effect reasonable
12 measures to verify that the sender is the member or manager, in
13 person or by proxy, purporting to send the transmission.

14 (ii) The communication creates a record that is capable of
15 retention, retrieval, and review, and that may thereafter be rendered
16 into clearly legible tangible form.

17 (j) “Foreign limited liability company” means an unincorporated
18 entity formed under the law of a jurisdiction other than this state
19 and denominated by that law as a limited liability company.

20 (k) “Limited liability company,” except in the phrase “foreign
21 limited liability company,” means an entity formed under this title
22 or an entity that becomes subject to this title pursuant to Article
23 13 (commencing with Section 17713.01).

24 (l) “Majority of the managers” unless otherwise provided in the
25 operating agreement, means more than 50 percent of the managers
26 of the limited liability company.

27 (m) “Majority of the members” unless otherwise provided in
28 the operating agreement, means more than 50 percent of the
29 membership interests of members in current profits of the limited
30 liability company.

31 (n) “Manager” means a person that under the operating
32 agreement of a manager-managed limited liability company is
33 responsible, alone or in concert with others, for performing the
34 management functions stated in subdivision (c) of Section
35 17704.07.

36 (o) “Manager-managed limited liability company” means a
37 limited liability company that qualifies under subdivision (a) of
38 Section 17704.07.

1 (p) “Member” means a person that has become a member of a
2 limited liability company under Section 17704.01 and has not
3 dissociated under Section 17706.02.

4 (q) “Member-managed limited liability company” means a
5 limited liability company that is not a manager-managed limited
6 liability company.

7 (r) “Membership interest” means a member’s rights in the
8 limited liability company, including the member’s transferable
9 interest, any right to vote or participate in management, and any
10 right to information concerning the business and affairs of the
11 limited liability company provided by this title.

12 (s) “Operating agreement” means the agreement, whether or
13 not referred to as an operating agreement and whether oral, in a
14 record, implied, or in any combination thereof, of all the members
15 of a limited liability company, including a sole member, concerning
16 the matters described in subdivision (a) of Section 17701.10. The
17 term “operating agreement” may include, without more, an
18 agreement of all members to organize a limited liability company
19 pursuant to this title. An operating agreement of a limited liability
20 company having only one member shall not be unenforceable by
21 reason of there being only one person who is a party to the
22 operating agreement. The term includes the agreement as amended
23 or restated.

24 (t) “Organization” means, whether domestic or foreign, a
25 partnership whether general or limited, limited liability company,
26 association, corporation, professional corporation, professional
27 association, nonprofit corporation, business trust, or statutory
28 business trust having a governing statute.

29 (u) “Organizer” means a person that acts under Section 17702.01
30 to form a limited liability company.

31 (v) “Person” means an individual, partnership, limited
32 partnership, trust, estate, association, corporation, limited liability
33 company, or other entity, whether domestic or foreign. Nothing
34 in this subdivision shall be construed to confer any rights under
35 the California Constitution or the United States Constitution.

36 (w) “Principal office” means the principal executive office of
37 a limited liability company or foreign limited liability company,
38 whether or not the office is located in this state.

1 (x) “Record” means information that is inscribed on a tangible
2 medium or that is stored in an electronic or other medium and is
3 retrievable in perceivable form.

4 (y) “State” means a state of the United States, the District of
5 Columbia, Puerto Rico, the United States Virgin Islands, or any
6 territory or insular possession subject to the jurisdiction of the
7 United States.

8 (z) “Transfer” includes an assignment, conveyance, deed, bill
9 of sale, lease, mortgage, security interest, encumbrance, gift, and
10 transfer by operation of law.

11 (aa) “Transferable interest” means the right, as originally
12 associated with a person’s capacity as a member, to receive
13 distributions from a limited liability company in accordance with
14 the operating agreement, whether or not the person remains a
15 member or continues to own any part of the right.

16 (ab) “Transferee” means a person to which all or part of a
17 transferable interest has been transferred, whether or not the
18 transferor is a member.

19 (ac) “Vote” includes authorization by written consent or consent
20 given by electronic transmission to the limited liability company.

21 17701.04. (a) A limited liability company is an entity distinct
22 from its members.

23 (b) A limited liability company may have any lawful purpose,
24 regardless of whether for profit, except the banking business, the
25 business of issuing policies of insurance and assuming insurance
26 risks, or the trust company business. A domestic or foreign limited
27 liability company may render services that may be lawfully
28 rendered only pursuant to a license, certificate, or registration
29 authorized by the Business and Professions Code, the Chiropractic
30 Act, the Osteopathic Act, or the Yacht and Ship Brokers Act, if
31 the applicable provisions of the Business and Professions Code,
32 the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship
33 Brokers Act authorize a limited liability company or foreign limited
34 liability company to hold that license, certificate, or registration.

35 (c) A limited liability company has perpetual duration.

36 (d) Notwithstanding subdivision ~~(a)~~ (b) and as specifically
37 provided in this subdivision, a limited liability company may
38 operate as a health care service plan licensed pursuant to Chapter
39 2.2 (commencing with Section 1340) of Division 2 of the Health
40 and Safety Code if the limited liability company is a subsidiary of

1 a health care service plan licensed pursuant to those provisions
2 and the limited liability company is established to serve an existing
3 line of business of the parent health care service plan.
4 Notwithstanding any other law, the tort or contract liability of a
5 limited liability company created to operate as a health care service
6 plan under this subdivision and its members is not limited or
7 restricted in any manner because of the limited liability company
8 status of the health care service plan.

9 (e) Nothing in this title shall be construed to permit a domestic
10 or foreign limited liability company to render professional services,
11 as defined in subdivision (a) of Section 13401 and in Section
12 13401.3, in this state.

13 17701.05. Subject to any limitations contained in the articles
14 of organization and to compliance with this title and any other
15 applicable laws, a limited liability company organized under this
16 title shall have all the powers of a natural person in carrying out
17 its business activities, including, without limitation, the power to:

18 (a) Transact its business, carry on its operations, qualify to do
19 business, and have and exercise the powers granted by this title in
20 any state, territory, district, possession, or dependency of the United
21 States, and in any foreign country.

22 (b) Sue, be sued, complain, and defend any action, arbitration,
23 or proceeding, whether judicial, administrative, or otherwise, in
24 its own name.

25 (c) Adopt, use, and at will alter a company seal. However, failure
26 to affix a seal does not affect the validity of any instrument.

27 (d) Make contracts and guarantees, incur liabilities, act as surety,
28 or borrow money.

29 (e) Sell, lease, exchange, transfer, convey, mortgage, pledge,
30 or otherwise dispose of all or any part of its property and assets.

31 (f) Purchase, take, receive, lease, or otherwise acquire, own,
32 hold, improve, use, or otherwise deal in and with any interest in
33 real or personal property, wherever located.

34 (g) Lend money to and otherwise assist its members and
35 employees.

36 (h) Issue notes, bonds, and other obligations and secure any of
37 them by mortgage or deed of trust or security interest of any or all
38 of its assets.

39 (i) Purchase, take, receive, subscribe for, or otherwise acquire,
40 own, hold, vote, use, employ, sell, mortgage, loan, pledge, or

1 otherwise dispose of and otherwise use and deal in and with stock
2 or other interests in and obligations of any person, or direct or
3 indirect obligations of the United States or of any government,
4 state, territory, governmental district, or municipality, or of any
5 instrumentality of any of them.

6 (j) Invest its surplus funds, lend money from time to time in any
7 manner which may be appropriate to enable it to carry on the
8 operations or fulfill the purposes set forth in its articles of
9 organization, or take and hold real property and personal property
10 as security for the payment of funds so loaned or invested.

11 (k) Be a promoter, stockholder, partner, member, manager,
12 associate, or agent of any person.

13 (l) Indemnify or hold harmless any person.

14 (m) Purchase and maintain insurance.

15 (n) Issue, purchase, redeem, receive, take, or otherwise acquire,
16 own, hold, sell, lend, exchange, transfer, or otherwise dispose of,
17 pledge, use, and otherwise deal in and with its own bonds,
18 debentures, and other securities.

19 (o) Pay pensions and establish and carry out pension, profit
20 sharing, bonus, share purchase, option, savings, thrift, and other
21 retirement, incentive, and benefit plans, trusts, and provisions for
22 all or any of the current or former members, managers, officers,
23 or employees of the limited liability company or any of its
24 subsidiary or affiliated entities, or to indemnify and purchase and
25 maintain insurance on behalf of any fiduciary of those plans, trusts,
26 or provisions.

27 (p) Make donations, regardless of specific benefit to the limited
28 liability company, to the public welfare or for community, civic,
29 religious, charitable, scientific, literary, educational, or similar
30 purposes.

31 (q) Make payments or donations or do any other act, not
32 inconsistent with this title or any other applicable law, that furthers
33 the business and affairs of the limited liability company.

34 (r) Pay compensation, and pay additional compensation, to any
35 or all managers, officers, members, and employees on account of
36 services previously rendered to the limited liability company,
37 whether or not an agreement to pay that compensation was made
38 before the services were rendered.

39 (s) Insure for its benefit the life of any of its members, managers,
40 officers, or employees, insure the life of any member for the

1 purpose of acquiring at his or her death the interest owned by the
2 member, and continue the insurance after the relationship
3 terminates.

4 (t) Carry out every other act not inconsistent with law that is
5 appropriate to promote and attain the purposes set forth in its
6 articles of organization.

7 17701.06. The law of this state governs all of the following:

8 (a) The internal affairs of a limited liability company.

9 (b) The liability of a member as member and a manager as
10 manager for the debts, obligations, or other liabilities of a limited
11 liability company.

12 (c) The authority of the members and agents of a limited liability
13 company.

14 17701.07. (a) It is the policy of this title and this state to give
15 maximum effect to the principles of freedom of contract and to
16 the enforceability of operating agreements.

17 (b) Unless displaced by particular provisions of this title, the
18 principles of law and equity supplement this title.

19 (c) Rules that statutes in derogation of the common law are to
20 be strictly construed shall have no application to this title.

21 (d) Unless the context otherwise requires, as used in this title,
22 the singular shall include the plural and the plural may refer to
23 only the singular. The use of any gender shall be applicable to all
24 genders.

25 17701.08. (a) The name of a limited liability company shall
26 contain the words “limited liability company,” or the abbreviation
27 “L.L.C.” or “LLC.” “Limited” may be abbreviated as “Ltd.,” and
28 “company” may be abbreviated as “Co.”

29 (b) Unless authorized by subdivision (c), the name of a limited
30 liability company shall not be a name that the Secretary of State
31 determines is likely to mislead the public and shall be
32 distinguishable in the records of the Secretary of State from all of
33 the following:

34 (1) The name of any limited liability company or foreign limited
35 liability company authorized to transact business in this state.

36 (2) Each name reserved under Section 17701.09.

37 (c) A limited liability company may apply to the Secretary of
38 State for authorization to use a name that does not comply with
39 subdivision (b). The Secretary of State shall authorize use of the

1 name applied for if, as to each noncomplying name, either of the
2 following applies:

3 (1) The present user, registrant, or owner of the noncomplying
4 name consents in a signed record to the use and submits an
5 undertaking in a form satisfactory to the Secretary of State to
6 change the noncomplying name to a name that complies with
7 subdivision (b) and is distinguishable in the records of the Secretary
8 of State from the name applied for.

9 (2) The applicant delivers to the Secretary of State a certified
10 copy of the final judgment of a court establishing the applicant's
11 right to use in this state the name applied for.

12 (d) Subject to Section 17708.04, this section applies to a foreign
13 limited liability company transacting intrastate business in this
14 state that has a certificate of registration to transact intrastate
15 business in this state or that has applied for a certificate of
16 registration.

17 (e) The name shall not include the words "bank," "trust,"
18 "trustee," "incorporated," "inc.," "corporation," or "corp." and
19 shall not include the words "insurer" or "insurance company" or
20 any other words suggesting that it is in the business of issuing
21 policies of insurance and assuming insurance risks.

22 17701.09. (a) A person may reserve the exclusive use of the
23 name of a limited liability company or foreign limited liability
24 company, including an alternative name for a foreign limited
25 liability company whose name is not available, by delivering an
26 application to the Secretary of State. The application shall state
27 the name and address of the applicant and the name proposed to
28 be reserved. If the Secretary of State finds that the name applied
29 for is available, it shall be reserved for the applicant's exclusive
30 use for up to 60 days. The Secretary of State shall not issue
31 certificates reserving the same name for two or more consecutive
32 60-day periods to the same applicant or for the use or benefit of
33 the same person; nor shall consecutive reservations be made by
34 or for the use or benefit of the same person for a name so similar
35 as to fall within the prohibitions of subdivision (b) of Section
36 17701.08.

37 (b) The owner of a name reserved for a limited liability company
38 or foreign limited liability company may transfer the reservation
39 to another person by delivering to the Secretary of State for filing

1 a signed notice of the transfer which states the name and address
2 of the transferee.

3 17701.10. (a) Except as otherwise provided in this section,
4 the operating agreement governs all of the following:

5 (1) Relations among the members as members and between the
6 members and the limited liability company.

7 (2) The rights and duties under this title of a person in the
8 capacity of manager.

9 (3) The activities of the limited liability company and the
10 conduct of those activities.

11 (4) The means and conditions for amending the operating
12 agreement.

13 (b) To the extent the operating agreement does not otherwise
14 provide for a matter described in subdivision (a), this title governs
15 the matter.

16 (c) An operating agreement shall not do any of the following:

17 (1) Vary a limited liability company's capacity under Section
18 17701.05 to sue and be sued in its own name.

19 (2) Vary the law applicable under Section 17701.06.

20 (3) Vary the power of the court under Section 17702.04.

21 (4) Subject to subdivisions (d) to (g), inclusive, eliminate the
22 duty of loyalty, the duty of care, or any other fiduciary duty.

23 (5) Subject to subdivisions (d) to (g), inclusive, eliminate the
24 contractual obligation of good faith and fair dealing under
25 subdivision (d) of Section 17704.09.

26 (6) Unreasonably restrict the duties and rights stated in Section
27 17704.10.

28 (7) Vary the power of a court to decree dissolution in the
29 circumstances specified in subdivision (a) of Section 17707.03 or
30 the provisions for avoidance of dissolution in subdivision (c) of
31 Section 17707.03.

32 (8) Except as stated herein, vary the requirements of Sections
33 17707.04 to 17707.08, inclusive.

34 (9) Unreasonably restrict the right of a member to maintain an
35 action under Article 9 (commencing with Section 17709.01).

36 (10) Restrict the right to approve a merger, conversion, or
37 domestication under Section 17710.14 to a member that will have
38 personal liability with respect to a surviving, converted, or
39 domesticated organization.

1 (11) Except as otherwise provided in subdivision (b) of Section
2 17701.12, restrict the rights under this title of a person other than
3 a member or manager.

4 (12) Vary any provision under Article 10 (commencing with
5 Section 17710.01).

6 (13) Vary any provision under Article 12 (commencing with
7 Section 17712.01).

8 (14) Eliminate the duty of loyalty under subdivision (b) of
9 Section 17704.09, but the operating agreement may do any of the
10 following:

11 (A) Identify specific types or categories of activities that do not
12 violate the duty of loyalty, if not manifestly unreasonable.

13 (B) Specify the number or percentage of members that may
14 authorize or ratify, after full disclosure to all members of all
15 material facts, a specific act or transaction that otherwise would
16 violate the duty of loyalty.

17 (15) Unreasonably reduce the duty of care under subdivision
18 (c) of Section 17704.09.

19 (16) Eliminate the obligation of good faith and fair dealing under
20 subdivision (d) of Section 17704.09, but the operating agreement
21 may prescribe the standards by which the performance of the
22 obligation is to be measured, if the standards are not manifestly
23 unreasonable.

24 (d) Except as provided in subdivision (c) and subdivisions (e)
25 to (g), inclusive, the effects of the provisions of this title may be
26 varied as among the members or as between the members and the
27 limited liability company by the operating agreement; provided,
28 however, that the provisions of Sections 17701.13, 17703.01,
29 17704.07, and 17704.08 shall only be varied by a written operating
30 agreement. Notwithstanding the first sentence of this subdivision
31 and in addition to the matters specified in subdivision (c), the
32 operating agreement shall not do either of the following:

33 (1) Vary the definitions of Section 17701.02, except as
34 specifically provided therein.

35 (2) Vary a member's rights under Sections 17703.01 and
36 17704.10.

37 (e) The fiduciary duties of a manager to the limited liability
38 company and to the members of the limited liability company shall
39 only be modified in a written operating agreement with the
40 informed consent of the members. Assenting to the operating

1 agreement pursuant to subdivision (b) of Section 17701.11 shall
2 not constitute informed consent.

3 (f) To the extent the operating agreement of a member-managed
4 limited liability company expressly relieves a member of a
5 responsibility that the member would otherwise have under this
6 title and imposes the responsibility on one or more other members,
7 the operating agreement may, to the benefit of the member that
8 the operating agreement relieves of the responsibility, also
9 eliminate or limit any fiduciary duty that would have pertained to
10 the responsibility.

11 (g) The operating agreement may alter or eliminate the
12 indemnification for a member or manager provided by subdivision
13 (a) of Section 17704.08 and may eliminate or limit a member or
14 manager's liability to the limited liability company and members
15 for money damages, except for the following:

16 (1) Breach of the duty of loyalty.

17 (2) A financial benefit received by the member or manager to
18 which the member or manager is not entitled.

19 (3) A member's liability for excess distributions under Section
20 17704.06.

21 (4) Intentional infliction of harm on the limited liability company
22 or a member.

23 (5) An intentional violation of criminal law.

24 17701.11. (a) A limited liability company is bound by and
25 may enforce the operating agreement.

26 (b) A person that becomes a member of a limited liability
27 company is deemed to assent to the operating agreement.

28 (c) Two or more persons intending to become the initial
29 members of a limited liability company may make an agreement
30 providing that upon the formation of the limited liability company
31 the agreement will become the operating agreement. One person
32 intending to become the initial member of a limited liability
33 company may assent to terms providing that upon the formation
34 of the limited liability company the terms will become the operating
35 agreement.

36 17701.12. (a) An operating agreement may specify that its
37 amendment requires the approval of a person that is not a party to
38 the operating agreement or the satisfaction of a condition. An
39 amendment is ineffective if its adoption does not include the
40 required approval or satisfy the specified condition.

1 (b) The obligations of a limited liability company and its
2 members to a person in the person's capacity as a transferee or
3 dissociated member are governed by the operating agreement.
4 Subject only to any court order issued under paragraph (2) of
5 subdivision (b) of Section 17705.03 to effectuate a charging order,
6 an amendment to the operating agreement made after a person
7 becomes a transferee or dissociated member is effective with regard
8 to any debt, obligation, or other liability of the limited liability
9 company or its members to the person in the person's capacity as
10 a transferee or dissociated member.

11 (c) If a record that has been delivered by a limited liability
12 company to the Secretary of State for filing and has become
13 effective under this title contains a provision that would be
14 ineffective under subdivision (c) of Section 17701.10 if contained
15 in the operating agreement, the provision is likewise ineffective
16 in the record.

17 (d) Subject to subdivision (c), if a record that has been delivered
18 by a limited liability company to the Secretary of State for filing
19 and has become effective under this title conflicts with a provision
20 of the operating agreement both of the following apply:

21 (1) The operating agreement prevails as to members, dissociated
22 members, transferees, and managers.

23 (2) The record prevails as to other persons to the extent they
24 reasonably rely on the record.

25 17701.13. (a) A limited liability company shall designate and
26 continuously maintain in this state both of the following:

27 (1) An office, which need not be a place of its activity in this
28 state.

29 (2) An agent for service of process.

30 (b) A foreign limited liability company that has a certificate of
31 registration under Section 17708.02 shall designate and
32 continuously maintain in this state an agent for service of process.

33 (c) An agent for service of process of a limited liability company
34 or foreign limited liability company shall be an individual who is
35 a resident of this state or a corporation that has complied with
36 Section 1505 and whose capacity to act as an agent has not
37 terminated. If a limited liability company or foreign limited liability
38 company designates a corporation as its agent for service of process
39 in an instrument filed with the Secretary of State, no address for
40 that agent for service of process shall be set forth in that instrument.

(d) Each limited liability company shall maintain in writing or in any other form capable of being converted into clearly legible tangible form at the office referred to in subdivision (a) all of the following:

(1) A current list of the full name and last known business or residence address of each member and of each holder of a transferable interest in the limited liability company set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and holder of a transferable interest.

(2) If the limited liability company is a manager-managed limited liability company, a current list of the full name and business or residence address of each manager.

(3) A copy of the articles of organization and all amendments thereto, together with any powers of attorney pursuant to which the articles of organization or any amendments thereto were executed.

(4) Copies of the limited liability company's federal, state, and local income tax or information returns and reports, if any, for the six most recent fiscal years.

(5) A copy of the limited liability company's operating agreement, if in writing, and any amendments thereto, together with any powers of attorney pursuant to which any written operating agreement or any amendments thereto were executed.

(6) Copies of the financial statement of the limited liability company, if any, for the six most recent fiscal years.

(7) The books and records of the limited liability company as they relate to the internal affairs of the limited liability company for at least the current and past four fiscal years.

(e) Upon request of an assessor, a domestic or foreign limited liability company owning, claiming, possessing, or controlling property in this state subject to local assessment shall make available at the limited liability company's principal office in this state or at the office required to be kept pursuant to subdivision (a) or at a place mutually acceptable to the assessor and the limited liability company a true copy of the business records relevant to the amount, cost, and value of all property that the limited liability company owns, claims, possesses, or controls within the county.

17701.14. (a) A limited liability company or foreign limited liability company may change its designated office, its principal

1 office, its agent for service of process, the address of its agent for
2 service of process, its mailing address, or, in the case of a foreign
3 limited liability company, its principal business office in this state
4 by delivering to the Secretary of State for filing a statement of
5 information as set forth in Section 17702.09.

6 (b) A statement of information is effective when filed by the
7 Secretary of State.

8 17701.15. (a) To resign as an agent for service of process of
9 a limited liability company or foreign limited liability company,
10 the agent shall deliver to the Secretary of State for filing a signed
11 and acknowledged statement of resignation containing the limited
12 liability company name, the Secretary of State's file number, the
13 name of resigning agent for service of process, and a statement
14 that the agent is resigning.

15 (b) The Secretary of State shall file a statement of resignation
16 delivered under subdivision (a) and mail or otherwise provide or
17 deliver a copy to the designated office of the limited liability
18 company or, in the case of a foreign limited liability company, to
19 the principal business office.

20 (c) Upon filing of the statement of resignation, the authority of
21 the agent to act in that capacity shall cease.

22 (d) If an individual who has been designated agent for service
23 of process dies or resigns or no longer resides in the state, or if the
24 corporate agent for that purpose resigns, dissolves, withdraws from
25 the state, forfeits its right to transact intrastate business in this state,
26 has its corporate rights, powers, and privileges suspended, or ceases
27 to exist, the limited liability company or foreign limited liability
28 company shall promptly file an initial or amended statement of
29 information as set forth in Section 17702.09.

30 17701.16. (a) In addition to Chapter 4 (commencing with
31 Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure,
32 process may be served upon limited liability companies and foreign
33 limited liability companies as provided in this section.

34 (b) Personal service of a copy of any process against the limited
35 liability company or the foreign limited liability company by
36 delivery (1) to any individual designated by it as agent, or (2) if
37 the designated agent is a corporation, to any person named in the
38 latest certificate of the corporate agent filed pursuant to Section
39 1505 at the office of the corporate agent, shall constitute valid
40 service on the limited liability company or the foreign limited

1 liability company. No change in the address of the agent for service
2 of process or appointment of a new agent for service of process
3 shall be effective until an amendment to the statement described
4 in Section 17701.14 is filed. In the case of a foreign limited liability
5 company that has appointed the Secretary of State as agent for
6 service of process pursuant to subdivision (d) of Section 17708.07,
7 process shall be delivered by hand to the Secretary of State, or to
8 any person employed in the capacity of assistant or deputy, and
9 shall include one copy of the process for each defendant to be
10 served, together with a copy of the court order authorizing the
11 service and the fee therefor. The order shall set forth the address
12 to which the process shall be sent by the Secretary of State.

13 (c) If an agent for service of process has resigned and has not
14 been replaced or if the designated agent cannot with reasonable
15 diligence be found at the address designated for personal delivery
16 of the process, and it is shown by affidavit to the satisfaction of
17 the court that process against a limited liability company or foreign
18 limited liability company cannot be served with reasonable
19 diligence upon the designated agent by hand in the manner
20 provided in Section 415.10, subdivision (a) of Section 415.20, or
21 subdivision (a) of Section 415.30 of the Code of Civil Procedure,
22 the court may make an order that the service shall be made upon
23 a domestic limited liability company or upon a registered foreign
24 limited liability company by delivering by hand to the Secretary
25 of State, or to any person employed in the Secretary of State's
26 office in the capacity of assistant or deputy, one copy of the process
27 for each defendant to be served, together with a copy of the order
28 authorizing the service. Service in this manner shall be deemed
29 complete on the 10th day after delivery of the process to the
30 Secretary of State.

31 (d) Upon receipt of the copy of process and the fee therefor, the
32 Secretary of State shall give notice of the service of the process to
33 the limited liability company or foreign limited liability company,
34 at its principal office, by forwarding to that office, by registered
35 mail with request for return receipt, the copy of the process.

36 (e) The Secretary of State shall keep a record of all process
37 served upon the Secretary of State under this title and shall record
38 therein the time of service and the action taken by the Secretary
39 of State. A certificate under the Secretary of State's official seal,
40 certifying to the receipt of process, the giving of notice to the

1 limited liability company or foreign limited liability company, and
2 the forwarding of the process pursuant to this section, shall be
3 competent and prima facie evidence of the service of process.

4 17701.17. (a) A member may, in a written operating agreement
5 or other writing, consent to be subject to the nonexclusive
6 jurisdiction of the courts of a specified jurisdiction and the courts
7 of this state, or the exclusive jurisdiction of the courts of this state.

8 (b) If a member desires to use the arbitration process, that
9 member may, in a written operating agreement or other writing,
10 consent to be nonexclusively subject to arbitration in a specified
11 state or states and this state, or to be exclusively subject to
12 arbitration in this state.

13 (c) Along with this consent to the jurisdiction of courts or
14 arbitration, a member may consent to be served with legal process
15 in the manner prescribed in the operating agreement or other
16 writing.

17
18 Article 2. Formation: Articles of Organization and Other Filings
19

20 17702.01. (a) One or more persons may act as organizers to
21 form a limited liability company by signing and delivering to the
22 Secretary of State for filing articles of organization on a form
23 prescribed by the Secretary of State.

24 (b) The articles of organization shall state all of the following:

25 (1) A statement that the purpose of the limited liability company
26 is to engage in any lawful act or activity for which a limited
27 liability company may be organized under this title.

28 (2) The name of the limited liability company, which shall
29 comply with Section 17701.08.

30 (3) The street address of the initial designated office and the
31 mailing address of the limited liability company if different from
32 the street address of the initial designated office.

33 (4) The name and *street* address of the initial agent for service
34 of process of the limited liability company who meets the
35 qualifications specified in subdivision (c) of Section 17701.13. If
36 a corporate agent is designated, only the name of the agent shall
37 be set forth.

38 (5) If the limited liability company is to be manager-managed,
39 the articles of organization shall contain a statement to that effect.

1 (6) If the limited liability company is to be managed by only
2 one manager, the articles of organization shall contain a statement
3 to that effect.

4 (c) Subject to subdivision (c) of Section 17701.12, articles of
5 organization may also contain any other provision not inconsistent
6 with law *other than* those provisions required by subdivision (b).

7 (d) A limited liability company is formed when the Secretary
8 of State has filed the articles of organization.

9 (e) Except in a proceeding by this state to dissolve a limited
10 liability company, the filing of the articles of organization by the
11 Secretary of State is conclusive proof that the organizer satisfied
12 all conditions to the formation of a limited liability company.

13 (f) The Secretary of State may cancel the filing of the articles
14 of organization if a check or other remittance accepted in payment
15 of the filing fee is not paid upon presentation. Upon receiving
16 written notification that the item presented for payment has not
17 been honored for payment, the Secretary of State shall give a first
18 written notice of the applicability of this subdivision to the agent
19 for service of process or to the person submitting the instrument.
20 Thereafter, if the amount has not been paid by cashier's check or
21 equivalent, the Secretary of State shall give a second written notice
22 of cancellation and the cancellation shall thereupon be effective.
23 The second notice shall be given 20 days or more after the first
24 notice, and 90 days or less after the original filing.

25 (g) The Secretary of State shall include with the instructional
26 materials, provided in conjunction with the form for filing the
27 articles of organization under subdivision (a), a notice that filing
28 the registration will obligate the limited liability company to pay
29 an annual tax for that taxable year to the Franchise Tax Board
30 pursuant to Section 17941 of the Revenue and Taxation Code.
31 That notice shall be updated annually to specify the dollar amount
32 of the tax.

33 17702.02. (a) The articles of organization may be amended
34 or restated at any time.

35 (b) To amend its articles of organization, a limited liability
36 company shall deliver to the Secretary of State for filing a
37 certificate of amendment, on a form prescribed by the Secretary
38 of State, stating all of the following:

39 (1) The present name of the limited liability company.

1 (2) The Secretary of State's file number for the limited liability
2 company.

3 (3) The changes the amendment makes to the articles of
4 organization as most recently amended or restated.

5 (c) To restate its articles of organization, a limited liability
6 company shall deliver to the Secretary of State for filing a
7 restatement, on a form prescribed by the Secretary of State, stating,
8 as applicable, the following:

9 (1) The present name of the limited liability company and the
10 Secretary of State's file number for the limited liability company.

11 (2) The changes the restatement makes to the articles of
12 organization as most recently amended or restated.

13 (d) Subject to subdivision (c) of Section 17701.12 and
14 subdivision (c) of Section 17702.05, an amendment to or
15 restatement of the articles of organization is effective when filed
16 by the Secretary of State and shall be duly executed by at least one
17 manager of a manager-managed limited liability company or at
18 least one member of a member-managed limited liability company
19 unless a greater number is provided in the articles of organization.

20 (e) If a member of a member-managed limited liability company,
21 or a manager of a manager-managed limited liability company,
22 knows that any information in filed articles of organization was
23 inaccurate when the articles were filed or has become inaccurate
24 owing to changed circumstances, the member or manager shall
25 promptly do the following:

26 (1) Cause the articles to be amended.

27 (2) If appropriate, deliver to the Secretary of State for filing a
28 statement of information under Section 17701.14 or a certificate
29 of correction under Section 17702.06.

30 (f) A limited liability company shall not amend its articles of
31 organization pursuant to subdivision (b) or restate its articles of
32 organization pursuant to subdivision (c) in order to change its
33 designated office, its mailing address, its agent for service of
34 process, or the address of its agent for service of process. To change
35 that information, the limited liability company shall deliver to the
36 Secretary of State for filing a statement of information under
37 Section 17701.14.

38 17702.03. (a) A record delivered to the Secretary of State for
39 filing pursuant to this title shall be signed as follows:

1 (1) Except as otherwise provided in paragraphs (2) and (3), a
2 record signed on behalf of a limited liability company shall be
3 signed by a person authorized by the limited liability company.

4 (2) A limited liability company's initial articles of organization
5 shall be signed by at least one person acting as an organizer.

6 (3) A record filed on behalf of a dissolved limited liability
7 company that has no members shall be signed by the person
8 winding up the limited liability company's activities or a person
9 appointed under Section 17707.04 to wind up those activities.

10 (4) A certificate of cancellation under Section 17707.02 shall
11 be signed by each organizer that signed the initial articles of
12 organization, but a personal representative of a deceased or
13 incompetent organizer may sign in the place of the decedent or
14 incompetent.

15 (b) Any record filed under this title may be signed by an agent.

16 (c) A limited liability company may record in the office of the
17 county recorder of any county in this state, and county recorders,
18 on request, shall record a certified copy of the limited liability
19 company articles of organization and any exhibit or attachment,
20 or any amendment or correction thereto, that has been filed in the
21 office of the Secretary of State. A foreign limited liability company
22 may record in the office of the county recorder of any county in
23 the state a certified copy of the application for registration of the
24 foreign limited liability company, or any amendment thereto, that
25 has been filed in the office of the Secretary of State. The recording
26 shall create a conclusive presumption in favor of any bona fide
27 purchaser or encumbrancer for value of the limited liability
28 company real property located in the county in which the certified
29 copy has been recorded, of the statements contained therein.

30 (d) If the Secretary of State determines that an instrument
31 submitted for filing or otherwise submitted does not conform to
32 the law and returns it to the person submitting it, the instrument
33 may be resubmitted accompanied by a written opinion of a member
34 of the State Bar of California submitting the instrument or
35 representing the person submitting it, to the effect that the specific
36 provisions of the instrument objected to by the Secretary of State
37 do conform to law and stating the points and authorities upon
38 which the opinion is based. The Secretary of State shall rely, with
39 respect to any disputed point of law, other than the application of
40 Sections 17701.08, 17701.09, 17708.02, and 17708.03, upon that

1 written opinion in determining whether the instrument conforms
2 to law. The date of filing in that case shall be the date the
3 instrument is received on resubmission.

4 17702.04. (a) If a person required by this title to sign a record
5 or deliver a record to the Secretary of State for filing under this
6 title does not do so, any other person that is aggrieved may petition
7 the superior court to order any of the following:

8 (1) The person to sign the record.

9 (2) The person to deliver the record to the Secretary of State for
10 filing.

11 (3) The Secretary of State to file the record unsigned.

12 (b) If a petitioner under subdivision (a) is not the limited liability
13 company or foreign limited liability company to which the record
14 pertains, the petitioner shall make the limited liability company a
15 party to the action.

16 17702.05. (a) A record authorized or required to be delivered
17 to the Secretary of State for filing under this title shall be captioned
18 to describe the record's purpose, be in a medium permitted by the
19 Secretary of State, and be delivered to the Secretary of State. If
20 the filing fees have been paid, unless the Secretary of State
21 determines that a record does not comply with applicable laws,
22 the Secretary of State shall file the record.

23 (b) Upon request and payment of the requisite fee, the Secretary
24 of State shall send to the requester a certified copy of a requested
25 record.

26 (c) Except for original articles of organization and except as
27 otherwise provided in Sections 17701.14 and 17702.06, a record
28 delivered to the Secretary of State for filing under this title may
29 specify a delayed effective date. Subject to Section 17702.06, a
30 record filed by the Secretary of State is effective as follows:

31 (1) If the record does not specify a delayed effective date, on
32 the date the record is filed as evidenced by the Secretary of State's
33 endorsement of the date on the record.

34 (2) If the record specifies a delayed effective date, on the date
35 specified in the record. A delayed effective date specified in the
36 record shall not be more than 90 days after the date the record is
37 filed.

38 (d) In the case of a delayed effective date, the instrument may
39 be prevented from becoming effective by a certificate stating that
40 by appropriate action it has been revoked and is null and void.

1 This certificate shall be executed in the same manner as the original
2 instrument and shall be filed before the delayed effective date.

3 (e) In the case of a merger agreement or certificate of merger,
4 a certificate revoking the earlier filing need only be executed on
5 behalf of one of the constituent parties to the merger. If no
6 revocation certificate is filed, the instrument becomes effective on
7 the date specified.

8 17702.06. (a) A limited liability company or foreign limited
9 liability company may deliver to the Secretary of State for filing
10 a certificate of correction on a form prescribed by the Secretary
11 of State to correct a record previously delivered by the limited
12 liability company or foreign limited liability company to the
13 Secretary of State and filed by the Secretary of State, if at the time
14 of filing the record contained inaccurate information or was
15 defectively signed.

16 (b) A certificate of correction under subdivision (a) may not
17 state a delayed effective date and shall do all of the following:

18 (1) State the present name of the limited liability company or
19 foreign limited liability company and the Secretary of State's file
20 number.

21 (2) Describe the title to the document to be corrected, including
22 its filing date.

23 (3) Set forth the name of each party to the document to be
24 corrected.

25 (4) Specify the inaccurate information and the reason it is
26 inaccurate or the manner in which the signing was defective.

27 (5) Correct the defective signature or inaccurate information.

28 (c) When filed by the Secretary of State, a certificate of
29 correction under subdivision (a) is effective retroactively as of the
30 effective date of the record the certificate corrects, but the statement
31 is effective when filed as to persons that previously relied on the
32 uncorrected record and would be adversely affected by the
33 retroactive effect.

34 17702.07. (a) If a record delivered to the Secretary of State
35 for filing under this title and filed by the Secretary of State contains
36 inaccurate information, a person that suffers a loss by reliance on
37 the information may recover damages for the loss from the
38 following:

1 (1) A person that signed the record, or caused another to sign
2 it on the person's behalf, and knew the information to be inaccurate
3 at the time the record was signed.

4 (2) Subject to subdivision (b), a member of a member-managed
5 limited liability company or the manager of a manager-managed
6 limited liability company, if all of the following apply:

7 (A) The record was delivered for filing on behalf of the limited
8 liability company.

9 (B) The member or manager had notice of the inaccuracy for a
10 reasonably sufficient time before the information was relied upon
11 so that, before the reliance, the member or manager reasonably
12 could have done all of the following:

13 (i) Effected an amendment under Section 17702.02.

14 (ii) Filed a petition under Section 17702.04.

15 (iii) Delivered to the Secretary of State for filing a statement of
16 information under Section 17701.14 or a certificate of correction
17 under Section 17702.06.

18 (b) To the extent that the operating agreement of a
19 member-managed limited liability company expressly relieves a
20 member of responsibility for maintaining the accuracy of
21 information contained in records delivered on behalf of the limited
22 liability company to the Secretary of State for filing under this title
23 and imposes that responsibility on one or more other members,
24 the liability stated in paragraph (2) of subdivision (a) applies to
25 those other members and not to the member that the operating
26 agreement relieves of the responsibility.

27 (c) An individual who signs a record authorized or required to
28 be filed under this title affirms under penalty of perjury that the
29 information stated in the record is accurate.

30 17702.09. (a) Every limited liability company and every
31 foreign limited liability company registered to transact intrastate
32 business in this state shall deliver to the Secretary of State for filing
33 within 90 days after the filing of its original articles of organization
34 or registering to transact intrastate business and biennially
35 thereafter during the applicable filing period, on a form prescribed
36 by the Secretary of State, a statement of information containing:

37 (1) The name of the limited liability company and the Secretary
38 of State's file number and, in the case of a foreign limited liability
39 company, the name under which the foreign limited liability
40 company is authorized to transact intrastate business in this state

1 and the state or other jurisdiction under the laws of which it is
2 organized.

3 (2) The name and street address of the agent in this state for
4 service of process required to be maintained pursuant to Section
5 17701.13. If a corporate agent is designated, only the name of the
6 agent shall be set forth.

7 (3) The street address of its principal office. In the case of a
8 foreign limited liability company, the street address of its principal
9 business office in this state, if any, and, in the case of a domestic
10 limited liability company, the street address of the office required
11 to be maintained pursuant to Section 17701.13.

12 (4) The mailing address of the limited liability company or
13 foreign limited liability company, if different from the street
14 address of its principal office, or principal business office in this
15 state, or, in the case of a domestic limited liability company, the
16 street address of the office required to be maintained pursuant to
17 Section 17701.13.

18 (5) The name and complete business or residence addresses of
19 any manager or managers and the chief executive officer, if any,
20 appointed or elected in accordance with the articles of organization
21 or operating agreement or, if no manager has been so elected or
22 appointed, the name and business or residence address of each
23 member.

24 (6) If the limited liability company or foreign limited liability
25 company chooses to receive renewal notices and any other
26 notifications from the Secretary of State by electronic mail instead
27 of by United States mail, the limited liability company or foreign
28 limited liability company shall include a valid electronic mail
29 address for the limited liability company or foreign limited liability
30 company, or for the limited liability company's or foreign limited
31 liability company's designee to receive those notices.

32 (7) The general type of business that constitutes the principal
33 business activity of the limited liability company or foreign limited
34 liability company, such as, for example, manufacture of aircraft,
35 wholesale liquor distributor, or retail department store.

36 (b) If there has been no change in the information contained in
37 the last filed statement of information of the limited liability
38 company or foreign limited liability company on file in the office
39 of Secretary of State, the limited liability company or foreign
40 limited liability company may, in lieu of filing the statement of

1 information required by subdivision (a), advise the Secretary of
2 State, on a form prescribed by the Secretary of State, that no
3 changes in the required information have occurred during the
4 applicable filing period.

5 (c) For purposes of this section, the applicable filing period for
6 a limited liability company shall be the calendar month during
7 which its original articles of organization was filed or, in the case
8 of a foreign limited liability company, the month during which its
9 application for registration was filed, and the immediately
10 preceding five calendar months. The Secretary of State shall
11 provide a notice to each limited liability company or foreign limited
12 liability company to comply with this section approximately three
13 months prior to the close of the applicable filing period. The notice
14 shall state the due date for compliance and shall be sent to the last
15 mailing address of the limited liability company or foreign limited
16 liability company according to the records of the Secretary of State,
17 or if none, to the street address of the principal office, or, in the
18 case of a domestic limited liability company, the office required
19 to be maintained pursuant to Section 17701.13, or to the last
20 electronic mail address according to the records of the Secretary
21 of State if the limited liability company or foreign limited liability
22 company has elected to receive notices from the Secretary of State
23 by electronic mail. The failure of the limited liability company or
24 foreign limited liability company to receive the notice shall not
25 exempt the limited liability company or foreign limited liability
26 company from complying with this section.

27 (d) Whenever any of the information required by subdivision
28 (a) changes, other than the name and address of the agent for
29 service of process, the limited liability company or foreign limited
30 liability company may file a current statement containing all the
31 information required by subdivision (a). When changing its agent
32 for service of process or when the address of the agent changes,
33 the limited liability company or foreign limited liability company
34 shall file a current statement containing all the information required
35 by subdivision (a). Whenever any statement is filed pursuant to
36 this section, that statement supersedes any previously filed
37 statement pursuant to this section, the statement in the original
38 articles of organization, and the statement in any previously filed
39 amended or restated articles of organization that have been filed,

1 or in the case of a foreign limited liability company, in the
2 application for registration.

3 (e) If a statement of information delivered to the Secretary of
4 State for filing under this section does not contain the information
5 required by subdivision (a), the Secretary of State shall promptly
6 return the statement of information to the reporting limited liability
7 company or foreign limited liability company for correction.

8 (f) The Secretary of State may destroy or otherwise dispose of
9 any statement filed pursuant to this section after it has been
10 superseded by the filing of a new statement.

11 17702.10. An instrument shall be deemed filed, and the date
12 of filing endorsed thereon, upon receipt by the Secretary of State
13 of any instrument accompanied by the fee prescribed in Article 3
14 (commencing with Section 12180) of Chapter 3 of Part 2 of
15 Division 3 of Title 2 of the Government Code. The date of filing
16 shall be the date the instrument is received by the Secretary of
17 State unless the instrument provides that it is to be withheld from
18 filing for a period of time not to exceed 90 days or unless, in the
19 judgment of the Secretary of State, the filing is intended to be
20 coordinated with the filing of some other document that cannot be
21 filed. The Secretary of State shall file a document as of any
22 requested future date not more than 90 days after its receipt,
23 including a Saturday, Sunday, or legal holiday, if that document
24 is received in the office of the Secretary of State at least one
25 business day prior to the requested date of filing. Upon receipt and
26 after filing of any document under this title, the Secretary of State
27 may microfilm or reproduce by other techniques any filings or
28 documents and destroy the original filing or document. The
29 microfilm or other reproduction of any document under this section,
30 or corresponding provision under prior law, shall be admissible in
31 any court of law.

32
33 Article 3. Relations of Members and Managers to Persons
34 Dealing with a Limited Liability Company
35

36 17703.01. (a) Unless the articles of organization indicate the
37 limited liability company is a manager-managed limited liability
38 company, every member is an agent of the limited liability
39 company for the purpose of its business or affairs, and the act of
40 any member, including, but not limited to, the execution in the

1 name of the limited liability company of any instrument, for the
2 apparent purpose of carrying on in the usual way the business or
3 affairs of the limited liability company of which that person is a
4 member, binds the limited liability company in the particular
5 matter, unless the member so acting has, in fact, no authority to
6 act for the limited liability company in the particular matter and
7 the person with whom the member is dealing has actual knowledge
8 of the fact that the member has no such authority.

9 (b) If the articles of organization indicate that the limited liability
10 company is a manager-managed limited liability company, each
11 of the following applies:

12 (1) No member acting solely in the capacity of a member is an
13 agent of the limited liability company nor can any member bind
14 or execute any instrument on behalf of the limited liability
15 company.

16 (2) Every manager is an agent of the limited liability company
17 for the purpose of its business or affairs, and the act of any
18 manager, including, but not limited to, the execution in the name
19 of the limited liability company of any instrument for apparently
20 carrying on in the usual way the business or affairs of the limited
21 liability company of which the person is a manager, binds the
22 limited liability company, unless the manager so acting has, in
23 fact, no authority to act for the limited liability company in the
24 particular matter and the person with whom the manager is dealing
25 has actual knowledge of the fact that the manager has no such
26 authority.

27 (c) No act of a manager or member in contravention of a
28 restriction on authority shall bind the limited liability company to
29 persons having actual knowledge of the restriction.

30 (d) Notwithstanding the provisions of subdivision (c), any note,
31 mortgage, evidence of indebtedness, contract, certificate, statement,
32 conveyance, or other instrument in writing, and any assignment
33 or endorsement thereof, executed or entered into between any
34 limited liability company and any other person, when signed by
35 at least two managers, or by one manager in the case of a limited
36 liability company whose articles of organization state that it is
37 managed by only one manager, is not invalidated as to the limited
38 liability company by any lack of authority of the signing managers
39 or manager in the absence of actual knowledge on the part of the

1 other person that the signing managers or manager had no authority
2 to execute the same.

3 17703.04. (a) All of the following apply to debts, obligations,
4 or other liabilities of a limited liability company, whether arising
5 in contract, tort, or otherwise:

6 (1) They are solely the debts, obligations, or other liabilities of
7 the limited liability company to which the debts, obligations, or
8 other liabilities relate.

9 (2) They do not become the debts, obligations, or other liabilities
10 of a member or manager solely by reason of the member acting
11 as a member or manager acting as a manager for the limited
12 liability company.

13 (b) A member of a limited liability company shall be subject to
14 liability under the common law governing alter ego liability, and
15 shall also be personally liable under a judgment of a court or for
16 any debt, obligation, or liability of the limited liability company,
17 whether that liability or obligation arises in contract, tort, or
18 otherwise, under the same or similar circumstances and to the same
19 extent as a shareholder of a corporation may be personally liable
20 for any debt, obligation, or liability of the corporation; except that
21 the failure to hold meetings of members or managers or the failure
22 to observe formalities pertaining to the calling or conduct of
23 meetings shall not be considered a factor tending to establish that
24 a member or the members have alter ego or personal liability for
25 any debt, obligation, or liability of the limited liability company
26 where the articles of organization or operating agreement do not
27 expressly require the holding of meetings of members or managers.

28 (c) Nothing in this section shall be construed to affect the
29 liability of a member of a limited liability company to third parties
30 for the member's participation in tortious conduct, or pursuant to
31 the terms of a written guarantee or other contractual obligation
32 entered into by the member, other than an operating agreement.

33 (d) A limited liability company or foreign limited liability
34 company shall carry insurance or provide an undertaking to the
35 same extent and in the same amount as is required by any law,
36 rule, or regulation of this state that would be applicable to the
37 limited liability company or foreign limited liability company were
38 it a corporation organized and existing or duly qualified for the
39 transaction of intrastate business under the General Corporation
40 Law.

1 (e) Notwithstanding subdivision (a), a member of a limited
2 liability company may agree to be obligated personally for any or
3 all of the debts, obligations, and liabilities of the limited liability
4 company as long as the agreement to be so obligated is set forth
5 in the articles of organization or in a written operating agreement
6 that specifically references this subdivision.

7
8 Article 4. Relations of Members to Each Other and to the
9 Limited Liability Company
10

11 17704.01. (a) If a limited liability company is to have only
12 one member upon formation, the person becomes a member as
13 agreed by that person and the organizer of the limited liability
14 company. That person and the organizer may be, but need not be,
15 different persons. If different, the organizer acts on behalf of the
16 initial member.

17 (b) If a limited liability company is to have more than one
18 member upon formation, those persons become members as agreed
19 by the persons before the formation of the limited liability
20 company. The organizer acts on behalf of the persons in forming
21 the limited liability company and may be, but need not be, one of
22 the persons.

23 (c) After formation of a limited liability company, a person
24 becomes a member as follows:

- 25 (1) As provided in the operating agreement.
26 (2) As the result of a transaction effective under Article 10
27 (commencing with Section 17710.01).
28 (3) With the consent of all the members.
29 (4) If, within 90 consecutive days after the limited liability
30 company ceases to have any members, the last person to have been
31 a member, or the legal representative of that person, designates a
32 person to become a member, and the designated person consents
33 to become a member.

34 (d) A person may become a member without acquiring a
35 transferable interest and without making or being obligated to
36 make a contribution to the limited liability company.

37 17704.02. A contribution may consist of tangible or intangible
38 property or other benefit to a limited liability company, including
39 money, services performed, promissory notes, other agreements

1 to contribute money or property, and contracts for services to be
2 performed.

3 17704.03. (a) A person's obligation to make a contribution to
4 a limited liability company is not excused by the person's death,
5 disability, or other inability to perform personally. If a person does
6 not make a required contribution, the person or the person's estate
7 is obligated to contribute money equal to the value of the part of
8 the contribution that has not been made, at the option of the limited
9 liability company.

10 (b) The obligation of a member to make a contribution to a
11 limited liability company may be compromised only by consent
12 of all the members. A conditional obligation of a member to make
13 a contribution to a limited liability company shall not be enforced
14 unless the conditions of the obligation have been satisfied or
15 waived as to or by that member. Conditional obligations include
16 contributions payable upon a discretionary call of a limited liability
17 company before the time the call occurs.

18 (c) A creditor of a limited liability company that extends credit
19 or otherwise acts in reliance on an obligation described in
20 subdivision (a) may enforce the obligation.

21 (d) Nothing in this section shall be construed to affect the rights
22 of third-party creditors of the limited liability company to seek
23 equitable remedies or any rights existing under the Uniform
24 Fraudulent Transfer Act (Chapter 1 (commencing with Section
25 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

26 17704.04. (a) Any distributions made by a limited liability
27 company before its dissolution and winding up shall be among the
28 members in accordance with the operating agreement. If the
29 operating agreement does not otherwise provide, distributions shall
30 be on the basis of the value, as stated in the required records when
31 the limited liability company decides to make the distribution, of
32 the contributions the limited liability company has received from
33 each member, except to the extent necessary to comply with any
34 transfer effective under Section 17705.02 and any charging order
35 in effect under Section 17705.03.

36 (b) A person has a right to a distribution before the dissolution
37 and winding up of a limited liability company only if the limited
38 liability company decides to make an interim distribution. Unless
39 the articles of organization or written operating agreement provides
40 otherwise, a person's dissociation does not entitle the person to a

1 distribution, and, beginning on the date of dissociation, the
2 dissociated person shall have only the right of a transferee of a
3 transferable interest with respect to that person's interest in the
4 limited liability company, and then only with respect to
5 distributions, if any, to which a transferee is entitled under the
6 operating agreement. If the dissociation is in violation of the
7 operating agreement, the limited liability company shall have the
8 right to offset any damages for the breach of the operating
9 agreement from the amounts, if any, otherwise distributable to the
10 dissociated person with respect to that person's interest in the
11 limited liability company.

12 (c) A person does not have a right to demand or receive a
13 distribution from a limited liability company in any form other
14 than money. A limited liability company may distribute an asset
15 in kind if each part of the asset is fungible with each other part and
16 each person receives a percentage of the asset equal in value to
17 the person's share of distributions.

18 (d) If a member or transferee becomes entitled to receive a
19 distribution, the member or transferee has the status of, and is
20 entitled to all remedies available to, a creditor of the limited
21 liability company with respect to the distribution.

22 17704.05. (a) A limited liability company shall not make a
23 distribution if after the distribution either of the following applies:

24 (1) The limited liability company would not be able to pay its
25 debts as they become due in the ordinary course of the limited
26 liability company's activities.

27 (2) The limited liability company's total assets would be less
28 than the sum of its total liabilities plus the amount that would be
29 needed, if the limited liability company were to be dissolved,
30 wound up, and terminated at the time of the distribution, to satisfy
31 the preferential rights upon dissolution, winding up, and
32 termination of members whose preferential rights are superior to
33 those of persons receiving the distribution.

34 (b) A limited liability company may base a determination that
35 a distribution is not prohibited under subdivision (a) on financial
36 statements prepared on the basis of accounting practices and
37 principles that are reasonable in the circumstances or on a fair
38 valuation or other method that is reasonable under the
39 circumstances.

(c) Except as otherwise provided in subdivision (f), the effect of a distribution under subdivision (a) is measured as follows:

(1) In the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the limited liability company, as of the date money or other property is transferred or debt incurred by the limited liability company.

(2) In all other cases, as of the date the distribution is authorized, if the payment occurs within 120 days after that date, or the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors.

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subdivision (a) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subdivision (f) of Section 17701.02, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

17704.06. (a) Except as otherwise provided in subdivision (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 17704.05, the member or manager is personally liable to the limited liability company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of Section 17704.05.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members,

1 the liability stated in subdivision (a) applies to the other members
2 and not the member that the operating agreement relieves of
3 authority and responsibility.

4 (c) A person that receives a distribution knowing that the
5 distribution to that person was made in violation of Section
6 17704.05 is personally liable to the limited liability company but
7 only to the extent that the distribution received by the person
8 exceeded the amount that could have been properly paid under
9 Section 17704.05.

10 (d) A person against which an action is commenced because
11 the person is liable under subdivision (a) may do all of the
12 following:

13 (1) Implead any other person that is subject to liability under
14 subdivision (a) and seek to compel contribution from the person.

15 (2) Implead any person that received a distribution in violation
16 of subdivision (c) and seek to compel contribution from the person
17 in the amount the person received in violation of subdivision (c).

18 (e) An action under this section is barred if not commenced
19 within four years after the distribution.

20 17704.07. (a) A limited liability company is a
21 member-managed limited liability company unless the articles of
22 organization and the operating agreement do either of the
23 following:

24 (1) Expressly provide that:

25 (A) The limited liability company is or will be
26 “manager-managed.”

27 (B) The limited liability company is or will be “managed by
28 managers.”

29 (C) Management of the limited liability company is or will be
30 “vested in managers.”

31 (2) Include words of similar import.

32 (b) In a member-managed limited liability company, the
33 following rules apply:

34 (1) The management and conduct of the limited liability
35 company are vested in the members.

36 (2) Except as provided in subdivision (r), each member has
37 equal rights in the management and conduct of the limited liability
38 company’s activities including equal voting rights.

39 (3) A difference arising among members as to a matter in the
40 ordinary course of the activities of the limited liability company

1 shall be decided by a majority of the members of the limited
2 liability company which the difference among the members has
3 arisen.

4 (4) An act outside the ordinary course of the activities of the
5 limited liability company may be undertaken only with the consent
6 of all members.

7 (5) The operating agreement may be amended only with the
8 consent of all members.

9 (c) In a manager-managed limited liability company, the
10 following rules apply:

11 (1) Except as otherwise expressly provided in this title, any
12 matter relating to the activities of the limited liability company is
13 decided exclusively by the managers.

14 (2) Each manager has equal rights in the management and
15 conduct of the activities of the limited liability company.

16 (3) A difference arising among managers as to a matter in the
17 ordinary course of the activities of the limited liability company
18 may be decided by a majority of the managers of the limited
19 liability company.

20 (4) The consent of all members of the limited liability company
21 is required to do any of the following:

22 (A) Sell, lease, exchange, or otherwise dispose of all, or
23 substantially all, of the limited liability company's property, with
24 or without the goodwill, outside the ordinary course of the limited
25 liability company's activities.

26 (B) Approve a merger or conversion under Article 10
27 (commencing with Section 17710.01).

28 (C) Undertake any other act outside the ordinary course of the
29 limited liability company's activities.

30 (D) Amend the operating agreement.

31 (5) A manager may be chosen at any time by the consent of a
32 majority of the members and remains a manager until a successor
33 has been chosen, unless the manager at an earlier time resigns, is
34 removed, or dies, or, in the case of a manager that is not an
35 individual, terminates. A manager may be removed at any time by
36 the consent of a majority of the members without notice or cause.

37 (6) A person need not be a member to be a manager, but the
38 dissociation of a member that is also a manager removes the person
39 as a manager. If a person that is both a manager and a member

1 ceases to be a manager, that cessation does not by itself dissociate
2 the person as a member.

3 (7) A person's ceasing to be a manager does not discharge any
4 debt, obligation, or other liability to the limited liability company
5 or members which the person incurred while a manager.

6 (d) The dissolution of a limited liability company does not affect
7 the applicability of this section. However, a person that wrongfully
8 causes dissolution of the limited liability company loses the right
9 to participate in management as a member and a manager.

10 (e) This title does not entitle a member to remuneration for
11 services performed for a member-managed limited liability
12 company, except for reasonable compensation for services rendered
13 in winding up the activities of a limited liability company.

14 (f) Meetings of members may be held at any place, by electronic
15 video screen communication or by electronic transmission by and
16 to the limited liability company pursuant to paragraphs (1) and (2)
17 of subdivision (i) of Section 17701.02, either within or without
18 this state, selected by the person or persons calling the meeting or
19 as may be stated in or fixed in accordance with the articles of
20 organization or a written operating agreement. If no other place is
21 stated or so fixed, all meetings shall be held at the principal office
22 of the limited liability company. Unless prohibited by the articles
23 of organization of the limited liability company, if authorized by
24 the operating agreement, members not physically present in person
25 or by proxy at a meeting of members may, by electronic
26 transmission by and to the limited liability company pursuant to
27 paragraphs (1) and (2) of subdivision (i) of Section 17701.02 or
28 by electronic video screen communication, participate in a meeting
29 of members, be deemed present in person or by proxy, and vote
30 at a meeting of members whether that meeting is to be held at a
31 designated place or in whole or in part by means of electronic
32 transmission by and to the limited liability company or by
33 electronic video screen communication, in accordance with
34 subdivision (l).

35 (g) A meeting of the members may be called by any manager
36 or by any member or members representing more than 10 percent
37 of the interests in current profits of members for the purpose of
38 addressing any matters on which the members may vote.

39 (h) (1) Whenever members are required or permitted to take
40 any action at a meeting, a written notice of the meeting shall be

1 given not less than 10 days nor more than 60 days before the date
2 of the meeting to each member entitled to vote at the meeting. The
3 notice shall state the place, date, and hour of the meeting, the means
4 of electronic transmission by and to the limited liability company
5 or electronic video screen communication, if any, and the general
6 nature of the business to be transacted. No other business may be
7 transacted at that meeting.

8 (2) Any report or any notice of a members' meeting shall be
9 given personally, by electronic transmission by the limited liability
10 company, or by mail or other means of written communication,
11 addressed to the member at the address of the member appearing
12 on the books of the limited liability company or given by the
13 member to the limited liability company for the purpose of notice,
14 or, if no address appears or is given, at the place where the principal
15 office of the limited liability company is located or by publication
16 at least once in a newspaper of general circulation in the county
17 in which the principal office is located. The notice or report shall
18 be deemed to have been given at the time when delivered
19 personally, delivered by electronic transmission by the limited
20 liability company, deposited in the mail, or sent by other means
21 of written communication. An affidavit of mailing or delivered by
22 electronic transmission by the limited liability company of any
23 notice or report in accordance with this article, executed by a
24 manager, shall be prima facie evidence of the giving of the notice
25 or report.

26 (3) If any notice or report addressed to the member at the address
27 of the member appearing on the books of the limited liability
28 company is returned to the limited liability company by the United
29 States Postal Service marked to indicate that the United States
30 Postal Service is unable to deliver the notice or report to the
31 member at the address, all future notices or reports shall be deemed
32 to have been duly given without further mailing if they are
33 available for the member at the principal office of the limited
34 liability company for a period of one year from the date of the
35 giving of the notice or report to all other members.

36 (4) Notice given by electronic transmission by the limited
37 liability company under this subdivision shall be valid only if it
38 complies with paragraph (1) of subdivision (i) of Section 17701.02.

1 Notwithstanding this condition, notice shall not be given by
2 electronic transmission by the limited liability company under this
3 subdivision after either of the following has occurred:

4 (A) The limited liability company is unable to deliver two
5 consecutive notices to the member by that means.

6 (B) The inability to so deliver the notices to the member
7 becomes known to the secretary, any assistant secretary, the transfer
8 agent, or any other person responsible for the giving of the notice.

9 (5) Upon written request to a manager by any person entitled
10 to call a meeting of members, the manager shall immediately cause
11 notice to be given to the members entitled to vote that a meeting
12 will be held at a time requested by the person calling the meeting,
13 not less than 10 days nor more than 60 days after the receipt of the
14 request. If the notice is not given within 20 days after receipt of
15 the request, the person entitled to call the meeting may give the
16 notice or, upon the application of that person, the superior court
17 of the county in which the principal office of the limited liability
18 company is located, or if the principal office is not in this state,
19 the county in which the limited liability company's address in this
20 state is located, shall summarily order the giving of the notice,
21 after notice to the limited liability company affording it an
22 opportunity to be heard. The procedure provided in subdivision
23 (c) of Section 305 shall apply to the application. The court may
24 issue any order as may be appropriate, including, without
25 limitation, an order designating the time and place of the meeting,
26 the record date for determination of members entitled to vote, and
27 the form of notice.

28 (i) When a members' meeting is adjourned to another time or
29 place, unless the articles of organization or a written operating
30 agreement otherwise require and except as provided in this
31 subdivision, notice need not be given of the adjourned meeting if
32 the time and place thereof or the means of electronic transmission
33 by and to the limited liability company or electronic video screen
34 communication, if any, are announced at the meeting at which the
35 adjournment is taken. At the adjourned meeting, the limited liability
36 company may transact any business that may have been transacted
37 at the original meeting. If the adjournment is for more than 45
38 days, or if after the adjournment a new record date is fixed for the
39 adjourned meeting, a notice of the adjourned meeting shall be
40 given to each member of record entitled to vote at the meeting.

(j) The actions taken at any meeting of members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy, provides a waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting in writing. All waivers, consents, and approvals shall be filed with the limited liability company records or made a part of the minutes of the meeting after conversion to the form in which those records or minutes are kept. Attendance of a person at a meeting shall constitute a waiver of notice of the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this title to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted nor the purpose of any meeting of members need be specified in any written waiver of notice, unless otherwise provided in the articles of organization or operating agreement, except as provided in subdivision (l).

(k) Members may participate in a meeting of the limited liability company through the use of conference telephones or electronic video screen communication, as long as all members participating in the meeting can hear one another, or by electronic transmission by and to the limited liability company pursuant to paragraphs (1) and (2) of subdivision (i) of Section 17701.02. Participation in a meeting pursuant to this provision constitutes presence in person at that meeting.

(l) Any action approved at a meeting, other than by unanimous approval of those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(m) (1) A majority of the members represented in person or by proxy shall constitute a quorum at a meeting of members.

(2) The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum, other than adjournment, is approved by the requisite percentage of interests of members specified in

1 this title or in the articles of organization or a written operating
2 agreement.

3 (3) In the absence of a quorum, any meeting of members may
4 be adjourned from time to time by the vote of a majority of the
5 interests represented either in person or by proxy, but no other
6 business may be transacted, except as provided in paragraph (2).

7 (n) (1) Any action that may be taken at any meeting of the
8 members may be taken without a meeting if a consent in writing,
9 setting forth the action so taken, is signed and delivered to the
10 limited liability company within 60 days of the record date for that
11 action by members having not less than the minimum number of
12 votes that would be necessary to authorize or take that action at a
13 meeting at which all members entitled to vote thereon were present
14 and voted.

15 (2) Unless the consents of all members entitled to vote have
16 been solicited in writing, (A) notice of any member approval of
17 an amendment to the articles of organization or operating
18 agreement, a dissolution of the limited liability company as
19 provided in Section 17707.01, or a merger of the limited liability
20 company as provided in Section 17710.10, without a meeting by
21 less than unanimous written consent shall be given at least 10 days
22 before the consummation of the action authorized by the approval,
23 and (B) prompt notice shall be given of the taking of any other
24 action approved by members without a meeting by less than
25 unanimous written consent, to those members entitled to vote who
26 have not consented in writing.

27 (3) Any member giving a written consent, or the member's
28 proxyholder, may revoke the consent personally or by proxy by a
29 writing received by the limited liability company prior to the time
30 that written consents of members having the minimum number of
31 votes that would be required to authorize the proposed action have
32 been filed with the limited liability company, but may not do so
33 thereafter. This revocation is effective upon its receipt at the office
34 of the limited liability company required to be maintained pursuant
35 to Section 17701.13.

36 (o) The use of proxies in connection with this section shall be
37 governed in the same manner as in the case of corporations formed
38 under the General Corporation Law, Division 1 (commencing with
39 Section 100) of Title 1.

(p) In order that the limited liability company may determine the members of record entitled to notices of any meeting or to vote, or entitled to receive any distribution or to exercise any rights in respect of any other lawful action, a manager, or members representing more than 10 percent of the interests of members, may fix, in advance, a record date, that is not more than 60 days nor less than 10 days prior to the date of the meeting and not more than 60 days prior to any other action. If no record date is fixed the following shall apply:

(1) The record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(2) The record date for determining members entitled to give consent to limited liability company action in writing without a meeting shall be the day on which the first written consent is given.

(3) The record date for determining members for any other purpose shall be at the close of business on the day on which the managers adopt the resolution relating thereto, or the 60th day prior to the date of the other action, whichever is later.

(4) The determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting unless a manager or the members who called the meeting fix a new record date for the adjourned meeting, but the manager or the members who called the meeting shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

(q) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the limited liability company or by electronic video screen communication if both of the following requirements are met:

(1) The limited liability company implements reasonable measures to provide members, in person or by proxy, a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings.

1 (2) When any member votes or takes other action at the meeting
2 by means of electronic transmission to the limited liability company
3 or electronic video screen communication, a record of that vote or
4 action shall be maintained by the limited liability company.

5 (r) The articles of organization or a written operating agreement
6 may provide to all or certain identified members of a specified
7 class or group of members the right to vote separately or with all
8 or any class or group of members on any matter. Voting by
9 members may be on a per capita, number, financial interest, class,
10 group, or any other basis. If no voting provision is contained in
11 the articles of organization or written operating agreement, each
12 of the following shall apply:

13 (1) The members of a limited liability company shall vote in
14 proportion to their interests in current profits of the limited liability
15 company or, in the case of a member who has assigned the
16 member's entire transferable interest in the limited liability
17 company to a person who has not been admitted as a member, in
18 proportion to the interest in current profits that the assigning
19 member would have, had the assignment not been made.

20 (2) Any amendment to the articles of organization or operating
21 agreement shall require the unanimous vote of all members.

22 (3) In all other matters in which a vote is required, except as
23 otherwise provided in this section, a vote of a majority of the
24 members shall be sufficient.

25 (s) Notwithstanding any provision to the contrary in the articles
26 of organization or operating agreement, in no event shall the
27 articles of organization be amended by a vote of less than a
28 majority of the members.

29 (t) Notwithstanding any provision to the contrary in the articles
30 of organization or operating agreement, members shall have the
31 right to vote on a dissolution of the limited liability company as
32 provided in subdivision (b) of Section 17707.01 and on a merger
33 of the limited liability company as provided in Section 17710.12.

34 (u) A written operating agreement may provide for the
35 appointment of officers, including, but not limited to, a chairperson
36 or a president, or both a chairperson and a president, a secretary,
37 a chief financial officer, and any other officers with the titles,
38 powers, and duties as shall be specified in the articles of
39 organization or operating agreement or as determined by the
40 managers or members. An officer may, but does not need to, be a

1 member or manager of the limited liability company, and any
2 number of offices may be held by the same person.

3 (v) Officers, if any, shall be appointed in accordance with the
4 written operating agreement or, if no such provision is made in
5 the operating agreement, any officers shall be appointed by the
6 managers and shall serve at the pleasure of the managers, subject
7 to the rights, if any, of an officer under any contract of
8 employment. Any officer may resign at any time upon written
9 notice to the limited liability company without prejudice to the
10 rights, if any, of the limited liability under any contract to which
11 the officer is a party.

12 (w) Subject to the provisions of the articles of organization, any
13 note, mortgage, evidence of indebtedness, contract, certificate,
14 statement, conveyance, or other instrument in writing, and any
15 assignment or endorsement thereof, executed or entered into
16 between any limited liability company and any other person, when
17 signed by the chairperson of the board, the president, or any vice
18 president and any secretary, any assistant secretary, the chief
19 financial officer, or any assistant treasurer of the limited liability
20 company, is not invalidated as to the limited liability company by
21 any lack of authority of the signing officers in the absence of actual
22 knowledge on the part of the other person that the signing officers
23 had no authority to execute the same.

24 17704.08. (a) A limited liability company shall reimburse for
25 any payment made and indemnify for any debt, obligation, or other
26 liability incurred by a member of a member-managed limited
27 liability company or the manager of a manager-managed limited
28 liability company in the course of the member's or manager's
29 activities on behalf of the limited liability company, if, in making
30 the payment or incurring the debt, obligation, or other liability,
31 the member or manager complied with the duties stated in Section
32 17704.09.

33 (b) A limited liability company may purchase and maintain
34 insurance on behalf of a member or manager of the limited liability
35 company against liability asserted against or incurred by the
36 member or manager in that capacity or arising from that status
37 even if, under subdivision (g) of Section 17701.10, the operating
38 agreement could not eliminate or limit the person's liability to the
39 limited liability company for the conduct giving rise to the liability.

1 17704.09. (a) The fiduciary duties that a member owes to a
2 member-managed limited liability company and the other members
3 of the limited liability company are the duties of loyalty and care
4 under subdivisions (b) and (c).

5 (b) A member's duty of loyalty to a limited liability company
6 and the other members is limited to the following:

7 (1) To account to a limited liability company and hold as trustee
8 for it any property, profit, or benefit derived by the member in the
9 conduct and winding up of the activities of a limited liability
10 company or derived from a use by the member of a limited liability
11 company property, including the appropriation of a limited liability
12 company opportunity.

13 (2) To refrain from dealing with a limited liability company in
14 the conduct or winding up of the activities of a limited liability
15 company as or on behalf of a party having an interest adverse to
16 a limited liability company.

17 (3) To refrain from competing with a limited liability company
18 in the conduct or winding up of the activities of the limited liability
19 company.

20 (c) A member's duty of care to a limited liability company and
21 the other members in the conduct and winding up of the activities
22 of the limited liability company is limited to refraining from
23 engaging in grossly negligent or reckless conduct, intentional
24 misconduct, or a knowing violation of law.

25 (d) A member shall discharge the duties to a limited liability
26 company and the other members under this title or under the
27 operating agreement and exercise any rights consistent with the
28 obligation of good faith and fair dealing.

29 (e) A member does not violate a duty or obligation under this
30 article or under the operating agreement merely because the
31 member's conduct furthers the member's own interest.

32 (f) In a manager-managed limited liability company, all of the
33 following rules apply:

34 (1) Subdivisions (a), (b), (c), and (e) apply to the manager or
35 managers and not the members.

36 (2) Subdivision (d) applies to the members and managers.

37 (3) Except as otherwise provided, a member does not have any
38 fiduciary duty to the limited liability company or to any other
39 member solely by reason of being a member.

1 17704.10. (a) Upon the request of a member or holder of a
2 transferable interest, for purposes reasonably related to the interest
3 of that person as a member or a holder of a transferable interest,
4 a manager or, if the limited liability company is member-managed,
5 a member in possession of the requested information, shall
6 promptly deliver, in writing, to the member or holder of a
7 transferable interest, at the expense of the limited liability company,
8 a copy of the information required to be maintained by paragraphs
9 (1), (2), and (4) of subdivision (d) of Section 17701.13, and any
10 written operating agreement of the limited liability company.

11 (b) Each member, manager, and holder of a transferable interest
12 has the right, upon reasonable request, for purposes reasonably
13 related to the interest of that person as a member, manager, or
14 holder of a transferable interest, to each of the following:

15 (1) To inspect and copy during normal business hours any of
16 the records required to be maintained pursuant to Section 17701.13.

17 (2) To obtain in writing from the limited liability company,
18 promptly after becoming available, a copy of the limited liability
19 company's federal, state, and local income tax returns for each
20 year.

21 (c) In the case of a limited liability company with more than 35
22 members, each of the following shall apply:

23 (1) A manager shall cause an annual report to be sent to each
24 of the members not later than 120 days after the close of the fiscal
25 year. The report, which may be sent by electronic transmission by
26 the limited liability company (paragraph (1) of subdivision (i) of
27 Section 17701.02) shall contain a balance sheet as of the end of
28 the fiscal year and an income statement and a statement of
29 cashflows for the fiscal year.

30 (2) Members representing at least 5 percent of the voting
31 interests of members, or three or more members, may make a
32 written request to a manager for an income statement of the limited
33 liability company for the initial three-month, six-month, or
34 nine-month period of the current fiscal year ending more than 30
35 days prior to the date of the request, and a balance sheet of the
36 limited liability company as of the end of that period. The statement
37 shall be delivered or mailed to the members within 30 days
38 thereafter.

39 (3) The financial statements referred to in this section shall be
40 accompanied by the report thereon, if any, of the independent

1 accountants engaged by the limited liability company or, if there
2 is no report, the certificate of the manager of the limited liability
3 company that the financial statements were prepared without audit
4 from the books and records of the limited liability company.

5 (d) A manager shall promptly furnish to a member a copy of
6 any amendment to the articles of organization or operating
7 agreement executed by a manager pursuant to a power of attorney
8 from the member. The articles of organization or operating
9 agreement may be sent by electronic transmission by the limited
10 liability company.

11 (e) The limited liability company shall send or cause information
12 to be sent in writing to each member or holder of a transferable
13 interest within 90 days after the end of each taxable year the
14 information necessary to complete federal and state income tax or
15 information returns and, in the case of a limited liability company
16 with 35 or fewer members, a copy of the limited liability
17 company's federal, state, and local income tax or information
18 returns for the year.

19 (f) In addition to the remedies provided in Sections 17713.06
20 and 17713.07 and any other remedies, a court of competent
21 jurisdiction may enforce the duty of making and mailing or
22 delivering the information and financial statements required by
23 this section and, for good cause shown, extend the time therefor.

24 (g) In any action under this section or under Section 17713.07,
25 if the court finds the failure of the limited liability company to
26 comply with the requirements of this section is without
27 justification, the court may award an amount sufficient to reimburse
28 the person bringing the action for the reasonable expenses incurred
29 by that person, including attorney's fees, in connection with the
30 action or proceeding.

31 (h) Any waiver of the rights provided in this section shall be
32 unenforceable.

33 (i) Any request, inspection, or copying by a member or holder
34 of a transferable interest may be made by that person or by that
35 person's agent or attorney.

36 (j) Upon complaint that a limited liability company is failing to
37 comply with the provisions of this section, or to afford to the
38 members rights given to them in the articles of organization or
39 operating agreement, the Attorney General may, in the name of
40 the people of the State of California, send to the office required to

1 be maintained pursuant to Section 17701.13, notice of the
2 complaint.

3 (k) If the answer of the limited liability company is not received
4 within 30 days of the date the notice was transmitted, or if the
5 answer is not satisfactory, and if the enforcement of the rights of
6 the aggrieved persons by private civil action, by class action, or
7 otherwise, would be so burdensome or expensive as to be
8 impracticable, the Attorney General may institute, maintain, or
9 intervene in any court of competent jurisdiction or before any
10 administrative agency for relief by way of injunction, the
11 dissolution of entities, the appointment of receivers, or any other
12 temporary, preliminary, provisional, or final remedies as may be
13 appropriate to protect the rights of members or to restore the
14 position of the members for the failure to comply with the
15 requirements of Section 17701.13 or the articles of organization
16 or the operating agreement. In any action, suit, or proceeding, there
17 may be joined as parties all persons and entities responsible for or
18 affected by the activity.

19
20 Article 5. Transferable Interests and Rights of Transferees and
21 Creditors
22

23 17705.01. A transferable interest is personal property.

24 17705.02. (a) With respect to a transfer, in whole or in part,
25 of a transferable interest, all of the following apply:

26 (1) A transfer is permissible.

27 (2) A transfer does not by itself cause a member's dissociation
28 or a dissolution and winding up of the activities of a limited liability
29 company.

30 (3) Subject to Section 17705.04, a transfer does not entitle the
31 transferee to do any of the following:

32 (A) Participate in the management or conduct of the activities
33 of a limited liability company.

34 (B) Except as otherwise provided in subdivision (c), have access
35 to records or other information concerning the activities of a limited
36 liability company.

37 (b) A transferee has the right to receive, in accordance with the
38 transfer, distributions to which the transferor would otherwise be
39 entitled; provided, however, that the pledge or granting of a security
40 interest, lien, or other encumbrance in or against any or all of the

1 transferable interest of a transferor shall not cause the transferor
2 to cease to be a member or grant to the transferee or to anyone else
3 the power to exercise any rights or powers of a member, including,
4 without limitation, the right to receive distributions to which the
5 member is entitled.

6 (c) In a dissolution and winding up of a limited liability
7 company, a transferee is entitled to an account of the limited
8 liability company's transactions only from the date of dissolution.

9 (d) A transferable interest may be evidenced by a certificate of
10 the interest issued by the limited liability company in a record,
11 and, subject to this article, the interest represented by the certificate
12 may be transferred by a transfer of the certificate.

13 (e) A limited liability company need not give effect to a
14 transferee's rights under this section until the limited liability
15 company has notice of the transfer.

16 (f) A transfer of a transferable interest in violation of a restriction
17 on transfer contained in the operating agreement is ineffective as
18 to a person having notice of the restriction at the time of transfer.

19 (g) Except as otherwise provided in subdivision (b) of this
20 section and paragraph (2) of subdivision (d) of Section 17706.02,
21 when a member transfers a transferable interest, the transferor
22 retains the rights of a member, other than the interest in
23 distributions transferred, and retains all duties and obligations of
24 a member.

25 (h) When a member transfers a transferable interest to a person
26 that becomes a member with respect to the transferred interest, the
27 transferee is liable for the member's obligations under Section
28 17704.03 and subdivision (c) of Section 17704.06 known to the
29 transferee when the transferee becomes a member.

30 17705.03. (a) On application by a judgment creditor of a
31 member or transferee, a court may enter a charging order against
32 the transferable interest of the judgment debtor for the unsatisfied
33 amount of the judgment. A charging order constitutes a lien on a
34 judgment debtor's transferable interest and requires the limited
35 liability company to pay over to the person to which the charging
36 order was issued any distribution that would otherwise be paid to
37 the judgment debtor.

38 (b) To the extent necessary to effectuate the collection of
39 distributions pursuant to a charging order in effect under
40 subdivision (a), the court may do any of the following:

1 (1) Appoint a receiver of the distributions subject to the charging
2 order, with the power to make all inquiries the judgment debtor
3 might have made.

4 (2) Make all other orders necessary to give effect to the charging
5 order.

6 (3) Upon a showing that distributions under a charging order
7 will not pay the judgment debt within a reasonable time, foreclose
8 the lien and order the sale of the transferable interest. The purchaser
9 at the foreclosure sale obtains only the transferable interest, does
10 not thereby become a member, and is subject to Section 17705.02.

11 (c) At any time before foreclosure under paragraph (3) of
12 subdivision (b), the member or transferee whose transferable
13 interest is subject to a charging order under subdivision (a) may
14 extinguish the charging order by satisfying the judgment and filing
15 a certified copy of the satisfaction with the court that issued the
16 charging order.

17 (d) At any time before foreclosure under paragraph (3) of
18 subdivision (b), a limited liability company or one or more
19 members whose transferable interests are not subject to the
20 charging order may pay to the judgment creditor the full amount
21 due under the judgment and thereby succeed to the rights of the
22 judgment creditor, including the charging order.

23 (e) This title does not deprive any member or transferee of the
24 benefit of any exemption laws applicable to the member's or
25 transferee's transferable interest.

26 (f) This section provides the exclusive remedy by which a person
27 seeking to enforce a judgment against a member or transferee may,
28 in the capacity of judgment creditor, satisfy the judgment from the
29 judgment debtor's transferable interest.

30 17705.04. If a member dies, the deceased member's personal
31 representative or other legal representative may exercise the rights
32 of a transferee provided in subdivision (c) of Section 17705.02
33 and, for the purposes of settling the estate, the rights of a current
34 member under Section 17704.10.

35 Article 6. Member's Dissociation

36
37
38 17706.01. (a) A person has the power to dissociate as a
39 member at any time, rightfully or wrongfully, by withdrawing as

1 a member by express will pursuant to subdivision (a) of Section
2 17706.02.

3 (b) A person's dissociation from a limited liability company is
4 wrongful only if either of the following apply to the dissociation:

5 (1) The dissociation is in breach of an express provision of the
6 operating agreement.

7 (2) The dissociation occurs before the termination of the limited
8 liability company and any of the following:

9 (A) The person withdraws as a member by express will.

10 (B) The person is expelled as a member by judicial order under
11 subdivision (e) of Section 17706.02.

12 (C) The person is dissociated under subdivision (g) of Section
13 17706.02 by becoming a debtor in bankruptcy.

14 (D) In the case of a person that is not a trust other than a business
15 trust, an estate, or an individual, the person is expelled or otherwise
16 dissociated as a member because it dissolved or terminated.

17 (c) A person that wrongfully dissociates as a member is liable
18 to the limited liability company and to the other members for any
19 damages caused by the dissociation. The liability is in addition to
20 any other debt, obligation, or other liability of the member to the
21 limited liability company or the other members.

22 17706.02. A person is dissociated as a member from a limited
23 liability company when any of the following occur:

24 (a) The limited liability company has notice of the person's
25 express will to withdraw as a member, but, if the person specified
26 a withdrawal date later than the date the limited liability company
27 had notice, on that later date.

28 (b) An event stated in the operating agreement as causing the
29 person's dissociation to occur.

30 (c) The person is expelled as a member pursuant to the operating
31 agreement.

32 (d) The person is expelled as a member by the unanimous
33 consent of the other members because any of the following applies:

34 (1) It is unlawful to carry on the limited liability company's
35 activities with the person as a member.

36 (2) There has been a transfer of all of the person's transferable
37 interest in the limited liability company, other than either of the
38 following:

39 (A) A transfer for security purposes.

1 (B) A charging order in effect under Section 17705.03 that has
2 not been foreclosed.

3 (3) The person is a corporation and, within 90 days after the
4 limited liability company notifies the person that it will be expelled
5 as a member because the person has filed a certificate of dissolution
6 or the equivalent, its charter has been revoked, or its right to
7 conduct business has been suspended by the jurisdiction of its
8 incorporation and the certificate of dissolution has not been revoked
9 or its charter or right to conduct business has not been reinstated.

10 (4) The person is a limited liability company or partnership that
11 has been dissolved and whose business is being wound up.

12 (e) On application by the limited liability company, the person
13 is expelled as a member by judicial order because the person has
14 done any of the following:

15 (1) Engaged, or is engaging, in wrongful conduct that has
16 adversely and materially affected, or will adversely and materially
17 affect, the limited liability company's activities.

18 (2) Willfully or persistently committed, or is willfully and
19 persistently committing, a material breach of the operating
20 agreement or the person's duties or obligations under Section
21 17704.09.

22 (3) Engaged, or is engaging, in conduct relating to the limited
23 liability company's activities that makes it not reasonably
24 practicable to carry on the activities with the person as a member.

25 (f) In the case of a person who is an individual, if either of the
26 following applies:

27 (1) The person dies.

28 (2) In a member-managed limited liability company if either of
29 the following applies:

30 (A) A guardian or general conservator for the person is
31 appointed.

32 (B) There is a judicial order that the person has otherwise
33 become incapable of performing the person's duties as a member
34 under this title or the operating agreement.

35 (g) In a member-managed limited liability company, the person
36 becomes a debtor in bankruptcy.

37 (h) In the case of a person that is a trust or is acting as a member
38 by virtue of being a trustee of a trust, the trust's entire transferable
39 interest in the limited liability company is distributed but not solely
40 by reason of a substitution of a successor trustee.

1 (i) In the case of a person that is an estate or is acting as a
2 member by virtue of being a personal representative of an estate,
3 the estate's entire transferable interest in the limited liability
4 company is distributed but not solely by reason of a substitution
5 of a successor personal representative.

6 (j) In the case of a member that is not an individual, partnership,
7 limited liability company, corporation, trust, or estate, the
8 termination of the member.

9 (k) The limited liability company participates in a merger under
10 Article 10 (commencing with Section 17710.01), and either of the
11 following applies:

12 (1) The limited liability company is not the surviving entity.

13 (2) Otherwise as a result of the merger, the person ceases to be
14 a member.

15 (l) The limited liability company terminates.

16 17706.03. (a) When a person is dissociated as a member of a
17 limited liability company all of the following apply:

18 (1) The person's right to participate as a member in the
19 management and conduct of the limited liability company's
20 activities terminates.

21 (2) If the limited liability company is member-managed, the
22 person's fiduciary duties as a member end with regard to matters
23 arising and events occurring after the person's dissociation.

24 (3) Subject to Section 17705.04 and Article 10 (commencing
25 with Section 17710.01), any transferable interest owned by the
26 person immediately before dissociation in the person's capacity
27 as a member is owned by the person solely as a transferee.

28 (b) A person's dissociation as a member of a limited liability
29 company does not of itself discharge the person from any debt,
30 obligation, or other liability to the limited liability company or the
31 other members that the person incurred while a member.

32 Article 7. Dissolution and Winding Up

33
34 17707.01. A limited liability company is dissolved, and its
35 activities shall be wound up, upon the happening of the first to
36 occur of the following:

37 (a) On the happening of an event set forth in a written operating
38 agreement or the articles of organization.
39

1 (b) By the vote of a majority of the members of the limited
2 liability company or a greater percentage of the voting interests
3 of members as may be specified in the articles of organization, or
4 a written operating agreement.

5 (c) The passage of 90 consecutive days during which the limited
6 liability company has no members, except on the death of a natural
7 person who is the sole member of a limited liability company, the
8 status of the member, including a membership interest, may pass
9 to the heirs, successors, and assigns of the member by will or
10 applicable law. The heir, successor, or assign of the member's
11 interest becomes a substituted member pursuant to subdivision (d)
12 of Section 17704.01, subject to administration as provided by
13 applicable law, without the permission or consent of the heirs,
14 successors, or assigns or, those administering the estate of the
15 deceased member.

16 (d) Entry of a decree of judicial dissolution pursuant to Section
17 17707.03.

18 17707.02. (a) Notwithstanding any other provision of this title,
19 if a domestic limited liability company has not conducted any
20 business, only a majority of the members, or, if there are no
21 members, the majority of the managers, if any, or if no members
22 or managers, the person or a majority of the persons signing the
23 articles of organization, may execute and acknowledge a certificate
24 of cancellation of articles of organization, on a form prescribed
25 by the Secretary of State, stating all of the following:

26 (1) The name of the domestic limited liability company and the
27 Secretary of State's file number.

28 (2) That the certificate of cancellation is being filed within 12
29 months from the date the articles of organization was filed.

30 (3) That the limited liability company does not have any debts
31 or other liabilities, except as provided in paragraph (4).

32 (4) That a final franchise tax return, as described by Section
33 23332 of the Revenue and Taxation Code, or a final annual tax
34 return, as described by Section 17947 of the Revenue and Taxation
35 Code, has been or will be filed with the Franchise Tax Board, as
36 required under Part 10.2 (commencing with Section 18401) of
37 Division 2 of the Revenue and Taxation Code.

38 (5) That the known assets of the limited liability company
39 remaining after payment of, or adequately providing for, known
40 debts and liabilities have been distributed to the persons entitled

1 thereto or that the limited liability company acquired no known
2 assets, as the case may be.

3 (6) That the limited liability company has not conducted any
4 business from the time of the filing of the articles of organization.

5 (7) That a majority of the managers or members voted, or, if no
6 managers or members, the person or a majority of the persons
7 signing the articles of organization, voted to dissolve the limited
8 liability company.

9 (8) If the limited liability company has received payments for
10 interests from investors, that those payments have been returned
11 to those investors.

12 (b) A certificate of cancellation executed and acknowledged
13 pursuant to subdivision (a) shall be filed with the Secretary of State
14 within 12 months from the date that the articles of organization
15 was filed. The Secretary of State shall notify the Franchise Tax
16 Board of the cancellation.

17 (c) Upon filing a certificate of cancellation pursuant to
18 subdivision (a), a limited liability company shall be canceled and
19 its powers, rights, and privileges shall cease.

20 17707.03. (a) Pursuant to an action filed by any manager or
21 by any member or members of a limited liability company, a court
22 of competent jurisdiction may decree the dissolution of a limited
23 liability company whenever any of the events specified in
24 subdivision (b) occurs.

25 (b) (1) It is not reasonably practicable to carry on the business
26 in conformity with the articles of organization or operating
27 agreement.

28 (2) Dissolution is reasonably necessary for the protection of the
29 rights or interests of the complaining members.

30 (3) The business of the limited liability company has been
31 abandoned.

32 (4) The management of the limited liability company is
33 deadlocked or subject to internal dissention.

34 (5) Those in control of the limited liability company have been
35 guilty of, or have knowingly countenanced persistent and pervasive
36 fraud, mismanagement, or abuse of authority.

37 (c) (1) In any suit for judicial dissolution, the other members
38 may avoid the dissolution of the limited liability company by
39 purchasing for cash the membership interests owned by the
40 members so initiating the proceeding, the “moving parties,” at

1 their fair market value. In fixing the value, the amount of any
2 damages resulting if the initiation of the dissolution is a breach by
3 any moving party or parties of an agreement with the purchasing
4 party or parties, including, without limitation, the operating
5 agreement, may be deducted from the amount payable to the
6 moving party or parties; provided, that no member who sues for
7 dissolution on the grounds set forth in paragraph (3), (4), or (5) of
8 subdivision (a) shall be liable for damages for breach of contract
9 in bringing that action.

10 (2) If the purchasing parties elect to purchase the membership
11 interests owned by the moving parties, are unable to agree with
12 the moving parties upon the fair market value of the membership
13 interests, and give bond with sufficient security to pay the estimated
14 reasonable expenses, including attorney's fees, of the moving
15 parties if the expenses are recoverable under paragraph (3), the
16 court, upon application of the purchasing parties, either in the
17 pending action or in a proceeding initiated in the superior court of
18 the proper county by the purchasing parties, shall stay the winding
19 up and dissolution proceeding and shall proceed to ascertain and
20 fix the fair market value of the membership interests owned by
21 the moving parties.

22 (3) The court shall appoint three disinterested appraisers to
23 appraise the fair market value of the membership interests owned
24 by the moving parties, and shall make an order referring the matter
25 to the appraisers so appointed for the purpose of ascertaining that
26 value. The order shall prescribe the time and manner of producing
27 evidence, if evidence is required. The award of the appraisers or
28 a majority of them, when confirmed by the court, shall be final
29 and conclusive upon all parties. The court shall enter a decree that
30 shall provide in the alternative for winding up and dissolution of
31 the limited liability company, unless payment is made for the
32 membership interests within the time specified by the decree. If
33 the purchasing parties do not make payment for the membership
34 interests within the time specified, judgment shall be entered
35 against them and the surety or sureties on the bond for the amount
36 of the expenses, including attorney's fees, of the moving parties.
37 Any member aggrieved by the action of the court may appeal
38 therefrom.

39 (4) If the purchasing parties desire to prevent the winding up
40 and dissolution of the limited liability company, they shall pay to

1 the moving parties the value of their membership interests
2 ascertained and decreed within the time specified pursuant to this
3 section, or, in the case of an appeal, as fixed on appeal. On
4 receiving that payment or the tender of payment, the moving parties
5 shall transfer their membership interests to the purchasing parties.

6 (5) For the purposes of this section, the valuation date shall be
7 the date upon which the action for judicial dissolution was
8 commenced. However, the court may, upon the hearing of a motion
9 by any party, and for good cause shown, designate some other date
10 as the valuation date.

11 (6) A dismissal of any suit for judicial dissolution by a manager,
12 member, or members shall not affect the other members' rights to
13 avoid dissolution pursuant to this section.

14 17707.04. In the event of a dissolution of a limited liability
15 company all of the following apply:

16 (a) The managers who have not wrongfully dissolved the limited
17 liability company, or, if none, the members, or, if none, the person
18 or a majority of the persons signing the articles of organization,
19 may wind up the affairs of the limited liability company, unless
20 the dissolution occurs pursuant to Section 17707.03, in which event
21 the winding up shall be conducted in accordance with the decree
22 of dissolution. The persons winding up the affairs of the limited
23 liability company shall give written notice of the commencement
24 of winding up by mail to all known creditors and claimants whose
25 addresses appear on the records of the limited liability company.

26 (b) Upon the petition of any manager or of any member or
27 members, or three or more creditors of a limited liability company,
28 a court of competent jurisdiction may enter a decree ordering the
29 winding up of the limited liability company, if that appears
30 necessary for the protection of any parties in interest. The decree
31 shall designate the managers or members, or if good cause is
32 shown, another person or persons, who are to wind up the affairs
33 of the limited liability company.

34 (c) Except as otherwise provided in the articles of organization
35 or a written operating agreement, the persons winding up the affairs
36 of the limited liability company pursuant to this section shall be
37 entitled to reasonable compensation.

38 17707.05. (a) Except as otherwise provided in the articles of
39 organization or the written operating agreement, after determining
40 that all the known debts and liabilities of a limited liability

1 company in the process of winding up, including, without
2 limitation, debts and liabilities to members who are creditors of
3 the limited liability company, have been paid or adequately
4 provided for, the remaining assets shall be distributed among the
5 members according to their respective rights and preferences as
6 follows:

7 (1) To members in satisfaction of liabilities for distributions
8 pursuant to Sections 17704.04, 17704.05, and 17704.06.

9 (2) To members of the limited liability company for the return
10 of their contributions.

11 (3) To members in the proportions in which those members
12 share in distributions.

13 (b) If the winding up is by court proceeding or subject to court
14 supervision, the distribution shall not be made until after the
15 expiration of any period for the presentation of claims that has
16 been prescribed by order of the court.

17 (c) (1) The payment of a debt or liability, whether the
18 whereabouts of the creditor is known or unknown, has been
19 adequately provided for if the payment has been provided for by
20 either of the following means:

21 (A) Payment for the debt or liability has been assumed or
22 guaranteed in good faith by one or more financially responsible
23 persons or by the United States government or any agency of the
24 United States government, and the provision, including the
25 financial responsibility of the person, was determined in good faith
26 and with reasonable care by the members or managers of the
27 limited liability company to be adequate at the time of any
28 distribution of the assets pursuant to this section.

29 (B) The amount of the debt or liability has been deposited as
30 provided in Section 2008 of the General Corporation Law.

31 (2) This subdivision shall not prescribe the exclusive means of
32 making adequate provision for debts and liabilities.

33 17707.06. (a) A limited liability company that is dissolved
34 nevertheless continues to exist for the purpose of winding up its
35 affairs, prosecuting and defending actions by or against it in order
36 to collect and discharge obligations, disposing of and conveying
37 its property, and collecting and dividing its assets. A limited
38 liability company shall not continue business except so far as
39 necessary for its winding up.

1 (b) No action or proceeding to which a limited liability company
2 is a party abates by the dissolution of the limited liability company
3 or by reason of proceedings for its winding up and dissolution.

4 (c) Any assets inadvertently or otherwise omitted from the
5 winding up continue in the dissolved limited liability company for
6 the benefit of the persons entitled to those assets upon dissolution
7 and on realization shall be distributed accordingly.

8 (d) After dissolution of the limited liability company, the limited
9 liability company is bound by both of the following:

10 (1) The act of a person authorized to wind up the affairs of the
11 limited liability company, if the act is appropriate for winding up
12 the activities of the limited liability company.

13 (2) The act of a person authorized to act on behalf of the limited
14 liability company, if the act would have bound the limited liability
15 company before dissolution, if the other party to the transaction
16 did not have notice of the dissolution.

17 17707.07. (a) (1) Causes of action against a dissolved limited
18 liability company, whether arising before or after the dissolution
19 of the limited liability company, may be enforced against any of
20 the following:

21 (A) Against the dissolved limited liability company to the extent
22 of its undistributed assets, including, without limitation, any
23 insurance assets held by the limited liability company that may be
24 available to satisfy claims.

25 (B) If any of the assets of the dissolved limited liability company
26 have been distributed to members, against members of the
27 dissolved limited liability company to the extent of the limited
28 liability company assets distributed to them upon dissolution of
29 the limited liability company.

30 Any member compelled to return distributed assets in an amount
31 that exceeds the sum of the member's pro rata share of the claim
32 and the amount for which the member could otherwise be held
33 liable under Section 17704.05 or 17704.06 may seek contribution
34 for the excess from any other member or manager, up to the sum
35 of that other person's pro rata share of the claim and that other
36 person's liabilities under Section 17704.05 or 17704.06.

37 (2) Except as set forth in subdivision (c), all causes of action
38 against a member of a dissolved limited liability company arising
39 under this section are extinguished unless the claimant commences
40 a proceeding to enforce the cause of action against that member

1 of a dissolved limited liability company prior to the earlier of the
2 following:

3 (A) The expiration of the statute of limitations applicable to the
4 cause of action.

5 (B) Four years after the effective date of the dissolution of the
6 limited liability company.

7 (3) As a matter of procedure only, and not for purposes of
8 determining liability, members of the dissolved limited liability
9 company may be sued in the name of the limited liability company
10 upon any cause of action against the limited liability company.
11 This section does not affect the rights of the limited liability
12 company or its creditors under Sections 17704.05 and 17704.06,
13 or the rights, if any, of creditors under the Uniform Fraudulent
14 Transfer Act, that may arise against the member of a limited
15 liability company.

16 (b) Summons or other process against a limited liability
17 company may be served by delivering a copy thereof to a manager,
18 member, officer, or person having charge of its assets or, if none
19 of these persons can be found, to any agent upon whom process
20 might be served at the time of dissolution. If none of those persons
21 can be found with due diligence and it is so shown by affidavit to
22 the satisfaction of the court, then the court may make an order that
23 summons or other process be served upon the dissolved limited
24 liability company by personally delivering a copy of the summons
25 or other process, together with a copy of the order, to the Secretary
26 of State or an assistant or Deputy Secretary of State. Service in
27 this manner is deemed complete on the 10th day after delivery of
28 the process to the Secretary of State. Upon receipt of process and
29 the fee therefor, the Secretary of State shall give notice to the
30 limited liability company as provided in Section 17701.16.

31 (c) Every limited liability company shall survive and continue
32 to exist indefinitely for the purpose of being sued in any quiet title
33 action. Any judgment rendered in that action shall bind each and
34 all of its members or other persons having any equity or other
35 interest in the limited liability company to the extent of that interest
36 and the action shall have the same force and effect as an action
37 brought under the provisions of Sections 410.50 and 410.60 of the
38 Code of Civil Procedure. Service of summons or other process in
39 any action may be made as provided in Chapter 4 (commencing

1 with Section 413.10) of Title 5 of Part 2 of the Code of Civil
2 Procedure or as provided in subdivision (b).

3 (d) For purposes of Article 4 (commencing with Section 19071)
4 of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation
5 Code, the liability described in this section shall be considered a
6 liability at law with respect to a dissolved limited liability company.

7 17707.08. (a) (1) The managers shall cause to be filed in the
8 office of, and on a form prescribed by, the Secretary of State, a
9 certificate of dissolution upon the dissolution of the limited liability
10 company pursuant to Article 7 (commencing with Section
11 17707.01), unless the event causing the dissolution is that specified
12 in subdivision (c) of Section 17707.01, in which case the persons
13 conducting the winding up of the limited liability company's affairs
14 pursuant to Section 17707.04 shall have the obligation to file the
15 certificate of dissolution.

16 (2) The certificate of dissolution shall set forth all of the
17 following:

18 (A) The name of the limited liability company and the Secretary
19 of State's file number.

20 (B) Any other information the persons filing the certificate of
21 dissolution determine to include.

22 (3) If a dissolution pursuant to subdivision (b) of Section
23 17707.01 is made by the vote of all of the members and a statement
24 to that effect is added to the certificate of cancellation of articles
25 of organization pursuant to subdivision (b), the separate filing of
26 a certificate of dissolution pursuant to this subdivision is not
27 required.

28 (b) (1) The persons who filed the certificate of dissolution shall
29 cause to be filed in the office of, and on a form prescribed by, the
30 Secretary of State, a certificate of cancellation of articles of
31 organization upon the completion of the winding up of the affairs
32 of the limited liability company pursuant to Section 17707.06,
33 unless the event causing the dissolution is that specified in
34 subdivision (c) of Section 17707.01, in that case the persons
35 conducting the winding up of the limited liability company's affairs
36 pursuant to Section 17707.04 shall have the obligation to file the
37 certificate of cancellation of articles of organization.

38 (2) The certificate of cancellation of articles of organization
39 shall set forth all of the following:

1 (A) The name of the limited liability company and the Secretary
2 of State's file number.

3 (B) That a final franchise tax return, as described by Section
4 23332 of the Revenue and Taxation Code, or a final annual tax
5 return, as described by Section 17947 of the Revenue and Taxation
6 Code, has been or will be filed with the Franchise Tax Board, as
7 required under Part 10.2 (commencing with Section 18401) of
8 Division 2 of the Revenue and Taxation Code.

9 (C) Any other information the persons filing the certificate of
10 cancellation of articles of organization determine to include.

11 (3) The Secretary of State shall notify the Franchise Tax Board
12 of the filing.

13 (c) Upon filing a certificate of cancellation pursuant to
14 subdivision (b), a limited liability company shall be canceled and
15 its powers, rights, and privileges shall cease.

16 17707.09. (a) Notwithstanding the filing of a certificate of
17 dissolution, a majority in interest of the members may cause to be
18 filed, in the office of, and on a form prescribed by, the Secretary
19 of State, a certificate of continuation, in any of the following
20 circumstances:

21 (1) The business of the limited liability company is to be
22 continued pursuant to a unanimous vote of the remaining members.

23 (2) The dissolution of the limited liability company was by vote
24 of the members pursuant to subdivision (b) of Section 17707.01
25 and each member who consented to the dissolution has agreed in
26 writing to revoke his or her vote in favor of or consent to the
27 dissolution.

28 (3) The limited liability company was not, in fact, dissolved.

29 (b) The certificate of continuation shall set forth all of the
30 following:

31 (1) The name of the limited liability company and the Secretary
32 of State's file number.

33 (2) The grounds provided by subdivision (a) that are the basis
34 for filing the certificate of continuation.

35 (c) Upon the filing of a certificate of continuation, the certificate
36 of dissolution shall be of no effect from the time of the filing of
37 the certificate of dissolution.

Article 8. Foreign Limited Liability Companies

17708.01. (a) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs all of the following:

(1) The organization of the limited liability company, its internal affairs, and the authority of its members and managers.

(2) The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the limited liability company.

(b) A foreign limited liability company shall not be denied a certificate of registration by reason of any difference between the law of the jurisdiction under which the limited liability company is formed and the law of this state.

(c) A certificate of registration does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company shall not engage in or exercise in this state.

17708.02. (a) A foreign limited liability company may apply for a certificate of registration to transact business in this state by delivering an application to the Secretary of State for filing on a form prescribed by the Secretary of State. The application shall state all of the following:

(1) The name of the foreign limited liability company, and, if the name does not comply with Section 17701.08, an alternate name adopted pursuant to subdivision (a) of Section 17708.05.

(2) The state or other jurisdiction under whose law the foreign limited liability company is organized and the date of its organization in that state or other jurisdiction, and a statement that the foreign limited liability company is authorized to exercise its powers and privileges in that state or other jurisdiction.

(3) The street address of the foreign limited liability company's principal office and of its principal business office in this state, if any.

(4) The name and street address of the foreign limited liability company's initial agent for service of process in this state, who meets the qualifications specified in subdivision (c) of Section 17701.13. If a corporate agent is designated, only the name of the agent shall be set forth.

1 (5) A statement that the Secretary of State is appointed the agent
2 of the foreign limited liability company for service of process if
3 the agent has resigned and has not been replaced or if the agent
4 cannot be found or served with the exercise of reasonable diligence.

5 (6) The mailing address of the foreign limited liability company
6 if different than the street address of the principal office, or
7 principal business office in this state.

8 (b) A foreign limited liability company shall deliver with a
9 completed application under subdivision (a) a certificate of
10 existence, status, or good standing or a record of similar import
11 signed by the Secretary of State or other official having custody
12 of the foreign limited liability company's publicly filed records in
13 the state or other jurisdiction under whose law the foreign limited
14 liability company is formed.

15 (c) The Secretary of State shall include with instructional
16 materials, provided in conjunction with registration under
17 subdivision (a), a notice that filing the registration will obligate
18 the foreign limited liability company to pay an annual tax to the
19 Franchise Tax Board pursuant to Section 17941 of the Revenue
20 and Taxation Code. That notice shall be updated annually to specify
21 the dollar amount of the tax.

22 17708.03. (a) A foreign limited liability company that enters
23 into repeated and successive transactions of business in this state,
24 other than in interstate or foreign commerce, is considered to be
25 transacting intrastate business in this state within the meaning of
26 this article.

27 (b) Without excluding other activities that may not be considered
28 to be transacting intrastate business in this state within the meaning
29 of this article, activities of a foreign limited liability company that
30 do not constitute transacting intrastate business in this state include
31 all of the following:

32 (1) Maintaining or defending any action or suit or any
33 administrative or arbitration proceeding, or effecting the settlement
34 of those, or the settlement of claims or disputes.

35 (2) Carrying on any activity concerning its internal affairs,
36 including holding meetings of its members or managers.

37 (3) Maintaining accounts in financial institutions.

38 (4) Maintaining offices or agencies for the transfer, exchange,
39 and registration of the limited liability company's own securities

1 or maintaining trustees or depositories with respect to those
2 securities.

3 (5) Selling through independent contractors.

4 (6) Soliciting or procuring orders, whether by mail or electronic
5 means or through employees or agents or otherwise, if the orders
6 require acceptance outside this state before they become contracts.

7 (7) Creating or acquiring indebtedness, evidences of
8 indebtedness, mortgages, liens, or security interests in real or
9 personal property.

10 (8) Securing or collecting debts or enforcing mortgages or other
11 security interests in property securing the debts and holding,
12 protecting, or maintaining property so acquired.

13 (9) Conducting an isolated transaction that is completed within
14 180 days and is not in the course of a number of repeated
15 transactions of a like nature.

16 (10) Transacting business in interstate commerce.

17 (c) Without excluding other activities that may not be considered
18 to be transacting intrastate business in this state within the meaning
19 of this article, a foreign limited liability company shall not be
20 considered to be transacting intrastate business in this state merely
21 because its subsidiary transacts intrastate business in this state, or
22 merely because of its status as any one or more of the following:

23 (1) A shareholder of a domestic corporation.

24 (2) A shareholder of a foreign corporation transacting intrastate
25 business.

26 (3) A limited partner of a foreign limited partnership transacting
27 intrastate business.

28 (4) A limited partner of a domestic limited partnership.

29 (5) A member or manager of a foreign limited liability company
30 transacting intrastate business.

31 (6) A member or manager of a domestic limited liability
32 company.

33 (d) A person shall not be deemed to be transacting intrastate
34 business in this state within the meaning of this article merely
35 because of its status as a member or manager of a domestic limited
36 liability company or a foreign limited liability company registered
37 to transact intrastate business in this state.

38 (e) This section does not apply in determining the contacts or
39 activities that may subject a foreign limited liability company to

1 service of process, taxation, or regulation under the law of this
2 state other than this article.

3 17708.04. Unless the Secretary of State determines that an
4 application for a certificate of registration does not comply with
5 the filing requirements of this article, the Secretary of State, upon
6 payment of all required filing fees, shall file the application of a
7 foreign limited liability company, and issue a certificate of
8 registration to transact intrastate business in this state to the foreign
9 limited liability company or its representative.

10 17708.05. (a) A foreign limited liability company whose name
11 does not comply with Section 17701.08 shall not obtain a certificate
12 of registration until it adopts, for the purpose of transacting
13 intrastate business in this state, an alternate name that complies
14 with Section 17701.08. A foreign limited liability company that
15 adopts an alternate name under this subdivision and obtains a
16 certificate of registration with the alternate name need not comply
17 with fictitious or assumed name statutes. After obtaining a
18 certificate of registration with an alternate name, a foreign limited
19 liability company shall transact intrastate business in this state
20 under the alternate name unless the limited liability company is
21 authorized under fictitious or assumed name statutes to transact
22 intrastate business in this state under another name.

23 (b) (1) If a foreign limited liability company authorized to
24 transact intrastate business in this state changes its name or its
25 alternate name adopted pursuant to subdivision (a), the foreign
26 limited liability company shall not thereafter transact intrastate
27 business in this state under that name or alternate name until it
28 delivers an amended application to register, on a form prescribed
29 by the Secretary of State, to the Secretary of State for filing.

30 (A) If the new name of the foreign limited liability company
31 does not comply with Section 17701.08, an alternate name shall
32 be adopted pursuant to subdivision (a).

33 (B) If the new name of the foreign limited liability company
34 complies with Section 17701.08, the foreign limited liability
35 company may not adopt an alternate name pursuant to subdivision
36 (a).

37 (C) If the foreign limited liability company is changing its
38 alternate name, the new alternate name shall comply with Section
39 17701.08.

1 (2) The amended application for registration shall state the
2 Secretary of State's file number, the name or alternate name
3 relinquished, or the new name or new alternate name adopted under
4 subdivision (a), or both.

5 (3) The foreign limited liability company shall deliver with the
6 amended application to register a certificate, issued by the Secretary
7 of State or other official having custody of the foreign limited
8 liability company's publicly filed records in the state or other
9 jurisdiction under whose law the limited liability company is
10 formed, that certifies the change of name was made in accordance
11 with the laws of that state or other jurisdiction. The certificate is
12 not required if the foreign limited liability company is changing
13 its alternate name adopted pursuant to subdivision (a).

14 (4) Upon the filing of the amended application to register with
15 the Secretary of State, the Secretary of State shall issue to the
16 foreign limited liability company a new certificate of registration
17 in accordance with Section 17708.04.

18 17708.06. (a) To cancel its certificate of registration to transact
19 intrastate business in this state, a foreign limited liability company
20 shall deliver to the Secretary of State for filing a certificate of
21 cancellation stating the name under which the foreign limited
22 liability company is authorized to transact intrastate business in
23 this state, and the Secretary of State's file number. The certificate
24 of registration is canceled when the notice becomes effective.

25 (b) The Secretary of State may cancel the application and
26 certificate of registration of a foreign limited liability company if
27 a check or other remittance accepted in payment of the filing fee
28 is not paid upon presentation. Upon receiving written notification
29 that the item presented for payment has not been honored for
30 payment, the Secretary of State shall give a first written notice of
31 the applicability of the section to the agent for service of process
32 or to the person submitting the instrument. Thereafter, if the amount
33 has not been paid by cashier's check or equivalent, the Secretary
34 of State shall give a second written notice of cancellation and the
35 cancellation shall thereupon be effective. The second notice shall
36 be given 20 days or more after the first notice, and 90 days or less
37 after the original filing.

38 17708.07. (a) A foreign limited liability company transacting
39 intrastate business in this state shall not maintain an action or

1 proceeding in this state unless it has a certificate of registration to
2 transact intrastate business in this state.

3 (b) The failure of a foreign limited liability company to have a
4 certificate of registration to transact intrastate business in this state
5 does not impair the validity of a contract or act of the foreign
6 limited liability company or prevent the foreign limited liability
7 company from defending an action or proceeding in this state.

8 (c) A member or manager of a foreign limited liability company
9 is not liable for the debts, obligations, or other liabilities of the
10 foreign limited liability company solely because the foreign limited
11 liability company transacted intrastate business in this state without
12 a certificate of registration.

13 (d) If a foreign limited liability company transacts intrastate
14 business in this state without a certificate of registration or cancels
15 its certificate of registration, it shall be deemed to have appointed
16 the Secretary of State as its agent for service of process for rights
17 of action arising out of the transaction of intrastate business in this
18 state.

19 17708.08. If the members of a foreign limited liability company
20 residing in this state represent 25 percent or more of the voting
21 interests of the members of that foreign limited liability company,
22 those members shall be entitled to all information and inspection
23 rights provided in Section 17704.10.

24 17708.09. The Attorney General may maintain an action to
25 enjoin a foreign limited liability company from transacting
26 intrastate business in this state in violation of this title.

27 Article 9. Actions by Members

28
29
30 17709.01. Any member of a foreign or domestic limited
31 liability company may bring a class action on behalf of all or a
32 class of members to enforce any claim common to those members
33 and any of those actions shall be governed by the law governing
34 class actions generally, provided that in order to maintain the class
35 action there shall be no requirement that the class be so numerous
36 that joinder of all members of the class is impracticable.

37 17709.02. (a) No action shall be instituted or maintained in
38 right of any domestic or foreign limited liability company by any
39 member of the limited liability company unless both of the
40 following conditions exist:

1 (1) The plaintiff alleges in the complaint that the plaintiff was
2 a member of record, or beneficiary, at the time of the transaction
3 or any part of the transaction of which the plaintiff complains, or
4 that the plaintiff's interest later devolved upon the plaintiff by
5 operation of law from a member who was a member at the time
6 of the transaction or any part of the transaction complained of.
7 Any member who does not meet these requirements may
8 nevertheless be allowed in the discretion of the court to maintain
9 the action on a preliminary showing to and determination by the
10 court, by motion and after a hearing at which the court shall
11 consider any evidence, by affidavit or testimony, as it deems
12 material, of all of the following:

13 (A) There is a strong prima facie case in favor of the claim
14 asserted on behalf of the limited liability company.

15 (B) No other similar action has been or is likely to be instituted.

16 (C) The plaintiff acquired the interest before there was disclosure
17 to the public or to the plaintiff of the wrongdoing of which plaintiff
18 complains.

19 (D) Unless the action can be maintained, the defendant may
20 retain a gain derived from defendant's willful breach of a fiduciary
21 duty.

22 (E) The requested relief will not result in unjust enrichment of
23 the limited liability company or any member of the limited liability
24 company.

25 (2) The plaintiff alleges in the complaint with particularity the
26 plaintiff's efforts to secure from the managers the action the
27 plaintiff desires or the reasons for not making that effort, and
28 alleges further that the plaintiff has either informed the limited
29 liability company or the managers in writing of the ultimate facts
30 of each cause of action against each defendant or delivered to the
31 limited liability company or the managers a true copy of the
32 complaint that the plaintiff proposes to file.

33 (b) In any action referred to in subdivision (a), at any time within
34 30 days after service of summons upon the limited liability
35 company or upon any defendant who is a manager of the limited
36 liability company or held that position at the time of the acts
37 complained of, the limited liability company or the defendant may
38 move the court for an order, upon notice and hearing, requiring
39 the plaintiff to furnish security as hereinafter provided. The motion
40 shall be based upon one or both of the following grounds:

1 (1) That there is no reasonable possibility that the prosecution
2 of the cause of action alleged in the complaint against the moving
3 party will benefit the limited liability company or its members.

4 (2) That the moving party, if other than the limited liability
5 company did not participate in the transaction complained of in
6 any capacity. The court, on application of the limited liability
7 company or any defendant, may, for good cause shown, extend
8 the 30-day period for an additional period not exceeding 60 days.

9 (c) (1) At the hearing upon any motion pursuant to subdivision
10 (b), the court shall consider evidence, written or oral, by witnesses
11 or affidavit, as may be material to the ground upon which the
12 motion is based, or to a determination of the probable reasonable
13 expenses, including attorney's fees, of the limited liability company
14 and the moving party that will be incurred in the defense of the
15 action.

16 (2) If the court determines, after hearing the evidence adduced
17 by the parties, that the moving party has established a probability
18 in support of any of the grounds upon which the motion is based,
19 the court shall fix the nature and amount of security, not to exceed
20 fifty thousand dollars (\$50,000), to be furnished by the plaintiff
21 for reasonable expenses, including attorney's fees, that may be
22 incurred by the moving party and the limited liability company in
23 connection with the action. A ruling by the court on the motion
24 shall not be a determination of any issue in the action or of the
25 merits of the action. The amount of the security may thereafter be
26 increased or decreased in the discretion of the court upon a showing
27 that the security provided has or may become inadequate or is
28 excessive, but the court shall not in any event increase the total
29 amount of the security beyond fifty thousand dollars (\$50,000) in
30 the aggregate for all defendants. If the court, upon a motion, makes
31 a determination that security shall be furnished by the plaintiff as
32 to any one or more defendants, the action shall be dismissed as to
33 that defendant or those defendants, unless the security required by
34 the court has been furnished within any reasonable time as shall
35 be fixed by the court. The limited liability company and the moving
36 party shall have recourse to the security in the amount that the
37 court determines upon the termination of the action.

38 (d) If the plaintiff, either before or after a motion is made
39 pursuant to subdivision (b), or any order or determination pursuant
40 to that motion, posts good and sufficient bond or bonds in the

1 aggregate amount of fifty thousand dollars (\$50,000) to secure the
2 reasonable expenses of the parties entitled to make the motion, the
3 plaintiff shall be deemed to have complied with the requirements
4 of this section and with any order for security made pursuant to
5 this section. Any motion then pending shall be dismissed and no
6 further or additional bond or other security shall be required.

7 (e) If a motion is filed pursuant to subdivision (b), no pleadings
8 need be filed by the limited liability company or any other
9 defendant and the prosecution of the action shall be stayed until
10 10 days after the motion has been disposed of.

11
12 Article 10. Merger and Conversion
13

14 17710.01. For purposes of this article, the following definitions
15 apply:

16 (a) “Converted entity” means the other business entity or foreign
17 other business entity or foreign limited liability company that
18 results from a conversion of a domestic limited liability company
19 under this title.

20 (b) “Converted limited liability company” means a domestic
21 limited liability company that results from a conversion of an other
22 business entity or a foreign other business entity or a foreign
23 limited liability company pursuant to Section 17710.08.

24 (c) “Converting limited liability company” means a domestic
25 limited liability company that converts to an other business entity
26 or a foreign other business entity or a foreign limited liability
27 company pursuant to this title.

28 (d) “Converting entity” means an other business entity or a
29 foreign other business entity or a foreign limited liability company
30 that converts to a domestic limited liability company pursuant to
31 Section 17710.08.

32 (e) “Constituent corporation” means a corporation that is merged
33 with or into one or more limited liability companies, foreign limited
34 liability companies, or other business entities and that includes a
35 surviving corporation.

36 (f) “Constituent limited liability company” means a limited
37 liability company that is merged with or into one or more other
38 limited liability companies, foreign limited liability companies,
39 or other business entities and that includes a surviving limited
40 liability company.

(g) “Constituent other business entity” means an other business entity that is merged with or into one or more limited liability companies or foreign limited liability companies and that includes a surviving other business entity.

(h) “Disappearing limited liability company” means a constituent limited liability company or foreign limited liability company that is not the surviving limited liability company.

(i) “Disappearing other business entity” means a constituent other business entity that is not the surviving other business entity.

(j) “Foreign other business entity” means an other business entity formed under the laws of a jurisdiction other than this state.

(k) “Other business entity” means a corporation, general partnership, limited partnership, business trust, real estate investment trust, or unincorporated association, other than a nonprofit association, but excludes a limited liability company or a foreign limited liability company.

(l) “Surviving limited liability company” means a limited liability company or foreign limited liability company into which one or more other limited liability companies, foreign limited liability companies, other business entities, or foreign business entities are merged.

(m) “Surviving other business entity” means an other business entity into which one or more limited liability companies or foreign limited liability companies are merged.

17710.02. (a) A limited liability company may be converted into an other business entity or a foreign other business entity or a foreign limited liability company pursuant to this article if both of the following apply:

(1) Pursuant to a conversion into a domestic or foreign general partnership or limited partnership or into a foreign limited liability company, each of the members of the converting limited liability company receives a percentage interest in the profits and capital of the converted entity equal to that member’s percentage interest in profits and capital of the converting limited liability company as of the effective time of the conversion.

(2) Pursuant to a conversion into an other business entity or foreign other business entity not specified in paragraph (1), both of the following occur:

(A) Each limited liability company interest of the same class is treated equally with respect to any distribution of cash, property,

1 rights, interests, or securities of the converted entity, unless all
2 members of the class consent.

3 (B) The nonredeemable limited liability company interests of
4 the converting limited liability company are converted only into
5 nonredeemable interests or securities of the converted entity, unless
6 all holders of the unredeemable interests consent.

7 (b) The conversion of a limited liability company to an other
8 business entity or a foreign other business entity or a foreign
9 limited liability company may be effected only if both of the
10 following conditions are satisfied:

11 (1) The law under which the converted entity will exist expressly
12 permits the formation of that entity pursuant to a conversion.

13 (2) The limited liability company complies with all other
14 requirements of any other law that applies to conversion to the
15 converted entity.

16 17710.03. (a) A limited liability company that desires to
17 convert to an other business entity or a foreign other business entity
18 or a foreign limited liability company shall approve a plan of
19 conversion.

20 The plan of conversion shall state all of the following:

21 (1) The terms and conditions of the conversion.

22 (2) The place of the organization of the converted entity and of
23 the converting limited liability company and the name of the
24 converted entity after conversion.

25 (3) The manner of converting the membership interests of each
26 of the members into shares of, securities of, or interests in, the
27 converted entity.

28 (4) The provisions of the governing documents for the converted
29 entity, including the limited liability company articles of
30 organization and operating agreement, or articles or certificate of
31 incorporation if the converted entity is a corporation, to which the
32 holders of interests in the converted entity are to be bound.

33 (5) Any other details or provisions that are required by the laws
34 under which the converted entity is organized, or that are desired
35 by the parties.

36 (b) (1) The plan of conversion shall be approved by all
37 managers and a majority in interest of each class of membership
38 interest or if there are no managers, a majority in interest of each
39 class of membership of the converting limited liability company,

1 unless a greater or lesser approval is required by the operating
2 agreement of the converting limited liability company.

3 (2) However, if the members of the limited liability company
4 would become personally liable for any obligations of the
5 converted entity as a result of the conversion, the plan of
6 conversion shall be approved by all of the limited members of the
7 converting limited liability company, unless the plan of conversion
8 provides that all members will have dissenters' rights as provided
9 in Article 11 (commencing with Section 17711.01).

10 (c) Upon the effectiveness of the conversion, all members of
11 the converting limited liability company, except those that exercise
12 dissenters' rights as provided in Article 11 (commencing with
13 Section 17711.01), shall be deemed parties to any governing
14 documents for the converted entity adopted as part of the plan of
15 conversion, regardless of whether or not the member has executed
16 the plan of conversion or the governing documents for the
17 converted entity. Any adoption of governing documents made
18 pursuant to the conversion shall be effective at the effective time
19 or date of the conversion.

20 (d) Notwithstanding its prior approval, a plan of conversion
21 may be amended before the conversion takes effect if the
22 amendment is approved by all managers and a majority of the
23 members or if there are no managers, a majority of the members
24 of the converting limited liability company and, if the amendment
25 changes any of the principal terms of the plan of conversion, the
26 amendment is approved by the managers and members of the
27 converting limited liability company in the same manner and to
28 the same extent as required for the approval of the original plan
29 of conversion.

30 (e) The managers by unanimous approval and the members of
31 a converting limited liability company may, by majority approval
32 at any time before the conversion is effective, in their discretion,
33 abandon a conversion, without further approval by the managers
34 or members, subject to the contractual rights of third parties other
35 than managers or members.

36 (f) The converted entity shall keep the plan of conversion at the
37 principal place of business of the converted entity if the converted
38 entity is a domestic limited liability company or foreign other
39 business entity, at the principal office of, or registrar or transfer
40 agent of, the converted entity, if the converted entity is a domestic

1 corporation, or at the office where records are to be kept pursuant
2 to Section 17701.13 if the converted entity is a domestic limited
3 liability company. Upon the request of a member of a converting
4 limited liability company, the authorized person on behalf of the
5 converted entity shall promptly deliver to the member or the holder
6 of shares, interests, or other securities, at the expense of the
7 converted entity, a copy of the plan of conversion. A waiver by a
8 member of the rights provided in this subdivision shall be
9 unenforceable.

10 17710.04. (a) A conversion into an other business entity or a
11 foreign other business entity or a foreign limited liability company
12 shall become effective upon the earliest date that all of the
13 following occur:

14 (1) The plan of conversion is approved by the members of the
15 converting limited liability company, as provided in Section
16 17710.03.

17 (2) All documents required by law to create the converted entity
18 are filed, which documents shall also contain a statement of
19 conversion, if required under Section 17710.06.

20 (3) The effective date, if set forth in the plan of conversion,
21 occurs.

22 (b) A copy of the certificate of limited partnership, statement
23 of partnership authority, articles of incorporation, or certificate of
24 conversion complying with Section 17710.06, if applicable, duly
25 certified by the Secretary of State, is conclusive evidence of the
26 conversion of the limited liability company.

27 17710.05. (a) If the limited liability company is converting
28 into a foreign limited liability company or foreign other business
29 entity, those conversion proceedings shall be in accordance with
30 the laws of the state or place of organization of the foreign limited
31 liability company or foreign other business entity and the
32 conversion shall become effective in accordance with that law.

33 (b) (1) To enforce an obligation of a limited liability company
34 that has converted to a foreign limited liability company or foreign
35 other business entity, the Secretary of State shall only be the agent
36 for service of process in an action or proceeding against that
37 converted foreign entity, if the agent designated for the service of
38 process for that entity is a natural person and cannot be found with
39 due diligence or if the agent is a corporation and no person, to
40 whom delivery may be made, may be located with due diligence,

1 or if no agent has been designated and if none of the officers,
2 members, managers, or agents of that entity may be located after
3 diligent search, and it is shown by affidavit to the satisfaction of
4 the court. The court then may make an order that service be made
5 by personal delivery to the Secretary of State or to an assistant or
6 Deputy Secretary of State of two copies of the process together
7 with two copies of the order, and the order shall set forth an address
8 to which the process shall be sent by the Secretary of State. Service
9 in this manner is deemed complete on the 10th day after delivery
10 of the process to the Secretary of State.

11 (2) Upon receipt of the process and order and the fee set forth
12 in Section 12197 of the Government Code, the Secretary of State
13 shall provide notice to that entity of the service of the process by
14 forwarding by certified mail, return receipt requested, a copy of
15 the process and order to the address specified in the order.

16 (3) The Secretary of State shall keep a record of all process
17 served upon the Secretary of State and shall record the time of
18 service and the Secretary of State's action with respect to the
19 process served. The certificate of the Secretary of State, under the
20 Secretary of State's official seal, certifying to the receipt of process,
21 the providing of notice of process to that entity, and the forwarding
22 of the process shall be competent and prima facie evidence of the
23 matters stated therein.

24 17710.06. (a) Upon conversion of a limited liability company,
25 one of the following applies:

26 (1) If the limited liability company is converting into a domestic
27 limited partnership, a statement of conversion shall be completed
28 on a certificate of limited partnership for the converted entity and
29 shall be filed with the Secretary of State.

30 (2) If the limited liability company is converting into a domestic
31 partnership, a statement of conversion shall be completed on the
32 statement of partnership authority for the converted entity. If no
33 statement of partnership authority is filed, a certificate of
34 conversion shall be filed separately with the Secretary of State.

35 (3) If the limited liability company is converting into a domestic
36 corporation, a statement of conversion shall be completed on the
37 articles of incorporation for the converted entity and shall be filed
38 with the Secretary of State.

1 (4) If the limited liability company is converting to a foreign
2 limited liability company or foreign other business entity, a
3 certificate of conversion shall be filed with the Secretary of State.

4 (b) Any certificate or statement of conversion shall be executed
5 and acknowledged by all members, unless a lesser number is
6 provided in the articles of organization or operating agreement,
7 and shall set forth all of the following:

8 (1) The name and the Secretary of State's file number of the
9 converting limited liability company.

10 (2) A statement that the principal terms of the plan of conversion
11 were approved by a vote of the members, that equaled or exceeded
12 the vote required under Section 17710.03, specifying each class
13 entitled to vote and the percentage vote required of each class.

14 (3) The name, form and jurisdiction of organization, and
15 Secretary of State's file number, if any, of the converted entity.

16 (4) The mailing address of the converted entity's agent for
17 service of process and the chief executive office of the converted
18 entity.

19 (c) The filing with the Secretary of State of a certificate of
20 conversion, a certificate of limited partnership, a statement of
21 partnership authority, or articles of incorporation containing a
22 statement of conversion as set forth in subdivision (a) shall have
23 the effect of the filing of a certificate of cancellation by the
24 converting limited liability company, and no converting limited
25 liability company that has made the filing is required to take any
26 action under Article 7 (commencing with Section 17707.01) as a
27 result of that conversion.

28 (d) For the purposes of this title, the certificate of conversion
29 shall be on a form prescribed by the Secretary of State.

30 17710.07. (a) Whenever a limited liability company or other
31 business entity having any real property in this state converts into
32 a limited liability company or an other business entity pursuant to
33 the laws of this state or of the state or place where the limited
34 liability company or other business entity was organized, and the
35 laws of the state or place of organization, including this state, of
36 the converting limited liability company or other converting entity
37 provide substantially that the conversion vests in the converted
38 limited liability company or other converted entity all the real
39 property of the converting limited liability company or other
40 converting entity, the filing for record in the office of the county

1 recorder of any county in this state where any of the real property
2 of the converting limited liability company or other converting
3 entity is located of either of the following shall evidence record
4 ownership in the converted limited liability company or other
5 converted entity of all interest of the converting limited liability
6 company or other converting entity in and to the real property
7 located in that county:

8 (1) A certificate of conversion or a statement of partnership
9 authority, a certificate of limited partnership, or articles of
10 incorporation complying with Section 17710.06 certified on or
11 after the effective date of the conversion by the Secretary of State.

12 (2) A copy of a certificate of conversion or a statement of
13 partnership authority, certificate of limited partnership, articles of
14 organization, articles of incorporation, or other certificate or
15 document evidencing the creation of a foreign other business entity
16 or foreign limited liability company by conversion, containing a
17 statement of conversion, certified by the Secretary of State or an
18 authorized public official of the state or place pursuant to the laws
19 of which the conversion is effected.

20 (b) A filed and, if appropriate, recorded certificate of conversion
21 or a statement of partnership authority, certificate of limited
22 partnership, articles of organization, articles or certificate of
23 incorporation, or other certificate evidencing the creation of a
24 foreign other business entity or foreign limited liability company
25 by conversion, containing a statement of conversion, filed pursuant
26 to subdivision (a) of Section 17710.06, stating the name of the
27 converting limited liability company or other converting entity in
28 whose name property was held before the conversion and the name
29 of the converted entity or converted limited liability company, but
30 not containing all of the other information required by Section
31 17710.06, operates with respect to the entities named to the extent
32 provided in subdivision (a).

33 (c) Recording of a certificate of conversion, or a statement of
34 partnership authority, certificate of limited partnership, articles of
35 organization, articles of incorporation, or other certificate
36 evidencing the creation of an other business entity or a limited
37 liability company by conversion, containing a statement of
38 conversion, in accordance with subdivision (a), shall create, in
39 favor of bona fide purchasers or encumbrances for value, a
40 conclusive presumption that the conversion was validly completed.

1 17710.08. (a) An other business entity or a foreign other
2 business entity or a foreign limited liability company may be
3 converted to a domestic limited liability company pursuant to this
4 article only if the converting entity is authorized by the laws
5 pursuant to which it is organized to effect the conversion.

6 (b) An other business entity or a foreign other business entity
7 or a foreign limited liability company that desires to convert into
8 a domestic limited liability company shall approve a plan of
9 conversion or another instrument as is required to be approved to
10 effect the conversion pursuant to the laws under which that entity
11 is organized.

12 (c) The conversion of an other business entity or a foreign other
13 business entity or a foreign limited liability company into a
14 domestic limited liability company shall be approved by the
15 number or percentage of the members, managers, shareholders, or
16 holders of interest of the converting entity as is required by the
17 laws under which that entity is organized, or a greater or lesser
18 percentage, subject to applicable laws, as set forth in the converting
19 entity's partnership agreement, articles of organization, operating
20 agreement, articles or certificate of incorporation, or other
21 governing document.

22 (d) The conversion by an other business entity or a foreign other
23 business entity or a foreign limited liability company into a
24 domestic limited liability company shall be effective under this
25 article at the time the conversion is effective under the laws under
26 which the converting entity is organized, as long as the articles of
27 organization containing a statement of conversion has been filed
28 with the Secretary of State. If the converting entity's governing
29 law is silent as to the effectiveness of the conversion, the
30 conversion shall be effective upon the completion of all acts
31 required under this title to form a limited liability company.

32 (e) If the converting foreign limited liability company or foreign
33 limited liability partnership is authorized to transact intrastate
34 business in this state, the filing with the Secretary of State of its
35 articles of organization containing a statement of conversion
36 pursuant to the laws under which the converting foreign limited
37 liability company or foreign other business entity is organized
38 shall have the effect of the filing of a certificate of cancellation by
39 the converting foreign limited partnership or foreign limited
40 liability company and no converting foreign limited liability

1 company or foreign limited partnership that has made the filing is
2 required to file a certificate of cancellation under Section 15909.07
3 or 17708.06 as a result of that conversion. If a converting other
4 business entity is a foreign corporation qualified to transact
5 intrastate business in this state, the foreign corporation shall, by
6 virtue of the filing, automatically surrender its right to transact
7 intrastate business.

8 17710.09. (a) An entity that converts into another entity
9 pursuant to this article is for all purposes other than for the purposes
10 of Part 10 (commencing with Section 17001), Part 10.2
11 (commencing with Section 18401), and Part 11 (commencing with
12 Section 23001) of Division 2 of the Revenue and Taxation Code,
13 the same entity that existed before the conversion and the
14 conversion shall not be deemed a transfer of property.

15 (b) Upon a conversion taking effect, all of the following apply:

16 (1) All the rights and property, whether real, personal, or mixed,
17 of the converting entity or converting limited liability company
18 are vested in the converted entity or converted limited liability
19 company.

20 (2) All debts, liabilities, and obligations of the converting entity
21 or converting limited liability company continue as debts,
22 liabilities, and obligations of the converted entity or converted
23 limited liability company.

24 (3) All rights of creditors and liens upon the property of the
25 converting entity or converting limited liability company shall be
26 preserved unimpaired and remain enforceable against the converted
27 entity or converted limited liability company to the same extent
28 as against the converting entity or converting limited liability
29 company as if the conversion had not occurred.

30 (4) Any action or proceeding pending by or against the
31 converting entity or converting limited liability company may be
32 continued against the converted entity or converted limited liability
33 company as if the conversion had not occurred.

34 (c) A member of a converting limited liability company is liable
35 for both of the following:

36 (1) All obligations of the converting limited liability company
37 for which the member was personally liable before the conversion.

38 (2) All obligations of the converted entity incurred after the
39 conversion takes effect, but those obligations may be satisfied only
40 out of property of the entity if that member of a limited liability

1 company, or a shareholder in a corporation, or unless expressly
2 provided otherwise in the articles of organization or other
3 governing documents, a limited partner of a limited partnership,
4 or a holder of equity securities in another converted entity if the
5 holders of equity securities in that entity are not personally liable
6 for the obligations of that entity under the law under which the
7 entity is organized or its governing documents.

8 (d) A member of a converted limited liability company remains
9 liable for any and all obligations of the converting entity for which
10 the member was personally liable before the conversion, but only
11 to the extent that the member was liable for the obligations of the
12 converting entity prior to the conversion.

13 (e) If the other party to a transaction with the limited liability
14 company reasonably believes when entering into the transaction
15 that the limited liability company member is a general partner, the
16 limited liability company member is liable for the obligations
17 incurred by the limited liability company within 90 days after the
18 conversion takes effect. The limited liability company member's
19 liability for all other obligations of the limited liability company
20 incurred after the conversion takes effect is that of a limited liability
21 company member.

22 17710.10. Mergers of limited liability companies shall be
23 governed by Sections 17710.11 to 17710.19, inclusive.

24 17710.11. The following entities may be merged pursuant to
25 this article:

26 (a) Two or more limited liability companies, two or more foreign
27 limited liability companies, or one or more limited liability
28 companies and one or more foreign limited liability companies
29 into one limited liability company or foreign limited liability
30 company except that there must be at least one constituent domestic
31 limited liability company for a surviving limited liability company.

32 (b) One or more limited liability companies, one or more foreign
33 limited liability companies, and one or more other business entities
34 into one of those other business entities or foreign other business
35 entities.

36 (c) One or more limited liability companies, one or more foreign
37 limited liability companies, and one or more other business entities
38 or foreign other business entities into one limited liability company
39 or foreign limited liability company.

(d) Notwithstanding this section, the merger of any number of limited liability companies with any number of other business entities or foreign other business entities may be effected only if the other business entities that are organized in this state are authorized by the laws under which they are organized to effect the merger, and the following apply:

(1) If a limited liability company is the surviving limited liability company, the foreign other business entities are not prohibited by the laws under which they are organized from effecting that merger.

(2) If a foreign limited liability company or foreign other business entity is the survivor of the merger, the laws of the jurisdiction under which the survivor is organized authorize that merger. Notwithstanding the first sentence of this paragraph, if one or more domestic corporations is also a party to the merger described in that sentence, the merger may be effected only if, with respect to any foreign other business entity that is a corporation, the foreign corporation is authorized by the laws under which it is organized to effect that merger.

17710.12. (a) Each limited liability company and other business entity that desires to merge shall approve an agreement of merger.

The agreement of merger shall be approved by all managers and a majority in interest of each class of membership interests of each constituent limited liability company, unless a greater approval is required by the operating agreement of the constituent limited liability company. Notwithstanding the previous sentence, if the members of any constituent limited liability company become personally liable for any obligations of a constituent limited liability company or constituent other business entity as a result of the merger, the principal terms of the agreement of merger shall be approved by all of the members of the constituent limited liability company, unless the agreement of merger provides that all members shall have the dissenters' rights provided in Article 11 (commencing with Section 17711.01). The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons, including a parent of a constituent limited liability company, may be parties to the agreement of merger. The agreement of merger shall state all of the following:

1 (1) The terms and conditions of the merger.

2 (2) The name and place of the organization of the surviving
3 limited liability company or surviving other business entity, and
4 of each disappearing limited liability company and disappearing
5 other business entity, and the agreement of merger may change
6 the name of the surviving limited liability company, the new name
7 may be the same as or similar to the name of a disappearing
8 domestic or foreign limited liability company, subject to Section
9 17701.08.

10 (3) The manner of converting the membership interests of each
11 of the constituent limited liability companies into interests, shares,
12 or other securities of the surviving limited liability company or
13 surviving other business entity, and if limited liability company
14 interests of any of the constituent limited liability companies are
15 not to be converted solely into interests, shares, or other securities
16 of the surviving limited liability company or surviving other
17 business entity, the cash, property, rights, interests, or securities
18 that the holders of the limited liability company interests are to
19 receive in exchange for the membership interests, the cash,
20 property, rights, interests, or securities that may be in addition to
21 or in lieu of interests, shares, or other securities of the surviving
22 limited liability company or surviving other business entity, or
23 that the limited liability company interests are canceled without
24 consideration.

25 (4) The amendments to the articles of organization of the
26 surviving limited liability company, if applicable, to be effected
27 by the merger, if any.

28 (5) Any other details or provisions that are required by the laws
29 under which any constituent other business entity is organized,
30 including, if a domestic corporation is a party to the merger, as
31 provided in subdivision (b) of Section 1113.

32 (6) Any other details or provisions that are desired, including,
33 without limitation, a provision for the treatment of fractional
34 membership interests.

35 (b) (1) Each membership interest of the same class of any
36 constituent limited liability company, other than a membership
37 interest in another constituent limited liability company that is
38 being canceled and that is held by a constituent limited liability
39 company or its parent or a limited liability company of which the
40 constituent limited liability company is a parent shall, unless all

1 members of the class consent, be treated equally with respect to
2 any distribution of cash, property, rights, interests, or securities.

3 (2) Notwithstanding paragraph (1), except in a merger of a
4 limited liability company with a limited liability company that
5 controls at least 90 percent of the membership interests entitled to
6 vote with respect to the merger, the unredeemable membership
7 interests of a constituent limited liability company may be
8 converted only into unredeemable interests or securities of the
9 surviving limited liability company or other business entity, or a
10 parent if a constituent limited liability company or a constituent
11 other business entity or its parent owns, directly or indirectly, prior
12 to the merger, membership interests of another constituent limited
13 liability company or interests or securities of a constituent other
14 business entity representing more than 50 percent of the interests
15 or securities entitled to vote with respect to the merger of the other
16 constituent limited liability company or constituent other business
17 entity or more than 50 percent of the voting power, as defined in
18 Section 194.5, of a constituent other business entity that is a
19 domestic corporation, unless all of the members of the class
20 consent.

21 (3) The provisions of this subdivision do not apply to any
22 transaction if the commissioner has approved the terms and
23 conditions of the transaction and the fairness of those terms
24 pursuant to Section 25142.

25 (c) Notwithstanding its prior approval, an agreement of merger
26 may be amended prior to the filing of the certificate of merger or
27 the agreement of merger, as provided in Section 17710.14, if the
28 amendment is approved by the managers and members of each
29 constituent limited liability company in the same manner as
30 required for approval of the original agreement of merger and, if
31 the amendment changes any of the principal terms of the agreement
32 of merger, the amendment is approved by the managers and
33 members of each constituent limited liability company in the same
34 manner and to the same extent as required for the approval of the
35 original agreement of merger, and by each of the constituent other
36 business entities.

37 (d) The managers and members of a constituent limited liability
38 company may, in their discretion, abandon a merger, subject to
39 the contractual rights, if any, of third parties, including other
40 constituent limited liability companies and constituent other

1 business entities, without further approval by the membership
2 interests, at any time before the merger is effective.

3 (e) An agreement of merger approved in accordance with
4 subdivision (a) may do the following:

5 (1) Effect any amendment to the operating agreement of any
6 constituent limited liability company.

7 (2) Effect the adoption of a new operating agreement for a
8 constituent limited liability company if it is the surviving limited
9 liability company in the merger. Any amendment to an operating
10 agreement or adoption of a new operating agreement made pursuant
11 to the foregoing sentence shall be effective at the effective time
12 or date of the merger. Notwithstanding the above provisions of
13 this subdivision, if a greater number of members is required to
14 approve an amendment to the operating agreement of a constituent
15 limited liability company than is required to approve the agreement
16 of merger pursuant to subdivision (a), and the number of members
17 that approve the agreement of merger is less than the number of
18 members required to approve an amendment to the operating
19 agreement of the constituent limited liability company, any
20 amendment to the operating agreement or adoption of a new
21 operating agreement of that constituent limited liability company
22 made pursuant to the first sentence of this subdivision shall be
23 effective only if the agreement of merger provides that all of the
24 members shall have the dissenters' rights provided in Article 11
25 (commencing with Section 17711.01).

26 (f) The surviving limited liability company or surviving other
27 business entity shall keep the agreement of merger at its designated
28 office or at the business address specified in paragraph (5) of
29 subdivision (a) of Section 17710.14, as applicable, and, upon the
30 request of a member of a constituent limited liability company or
31 a holder of shares, interests, or other securities of a constituent
32 other business entity, the managers or members of the surviving
33 limited liability company or the authorized person of the surviving
34 other business entity shall promptly deliver to the member or the
35 holder of shares, interests, or other securities, at the expense of the
36 surviving limited liability company or surviving other business
37 entity, a copy of the agreement of merger. A waiver by a member
38 or holder of shares, interests, or other securities of the rights
39 provided in this subdivision shall be unenforceable.

1 17710.13. Subdivision (b) of Section 17710.12 shall not apply
2 to any transaction if the commissioner has approved the terms and
3 conditions of the transaction and the fairness of such terms and
4 conditions pursuant to Section 25142.

5 17710.14. (a) If the surviving entity is a limited liability
6 company or an other business entity, other than a corporation in a
7 merger in which a domestic corporation is a constituent party, after
8 approval of a merger by the constituent limited liability companies
9 and any constituent other business entities, the constituent limited
10 liability companies and constituent other business entities shall
11 file a certificate of merger in the office of, and on a form prescribed
12 by, the Secretary of State. The certificate of merger shall be
13 executed and acknowledged by each domestic constituent limited
14 liability company by all managers, or if none, all members unless
15 a lesser number is provided in the articles of organization or
16 operating agreement of the domestic constituent limited liability
17 company and by each foreign constituent limited liability company
18 by one or more managers, or if none, members, and by each
19 constituent other business entity by those persons required to
20 execute the certificate of merger by the laws under which the
21 constituent other business entity is organized. The certificate of
22 merger shall set forth all of the following:

23 (1) The names and the Secretary of State's file numbers, if any,
24 of each of the constituent limited liability companies and
25 constituent other business entities, separately identifying the
26 disappearing limited liability companies and disappearing other
27 business entities and the surviving limited liability company or
28 surviving other business entity.

29 (2) If a vote of the members was required pursuant to Section
30 17710.12, a statement setting forth the total number of outstanding
31 interests of each class entitled to vote on the merger and that the
32 principal terms of the agreement of merger were approved by a
33 vote of the number of interests of each class that equaled or
34 exceeded the vote required, specifying each class entitled to vote
35 and the percentage vote required of each class.

36 (3) If the surviving entity is a limited liability company and not
37 an other business entity, any change required to the information
38 set forth in the articles of organization of the surviving limited
39 liability company resulting from the merger, including any change
40 in the name of the surviving limited liability company resulting

1 from the merger. The filing of a certificate of merger setting forth
2 any such changes to the articles of organization of the surviving
3 limited liability company shall have the effect of the filing of a
4 certificate of amendment by the surviving limited liability
5 company, and the surviving limited liability company need not
6 file an amendment under Section 17702.02 to reflect those changes.

7 (4) The future effective date, that shall be a date certain not
8 more than 90 days subsequent to the date of filing of the merger,
9 if the merger is not to be effective upon the filing of the certificate
10 of merger with the office of the Secretary of State.

11 (5) If the surviving entity is an other business entity or a foreign
12 limited liability company, the full name of the entity, type of entity,
13 legal jurisdiction where the entity was organized and by whose
14 laws its internal affairs are governed, and the address of the
15 principal place of business of the entity.

16 (6) Any other information required to be stated in the certificate
17 of merger by the laws where each constituent other business entity
18 is organized, including if a domestic corporation is a party to the
19 merger, ~~or as~~ required under paragraph (2) of subdivision (g) of
20 Section 1113. If the surviving entity is a foreign limited liability
21 company in a merger where a domestic corporation is a
22 disappearing other business entity, a copy of the agreement of
23 merger and attachments as required under paragraph (1) of
24 subdivision (g) of Section 1113 shall be filed at the same time as
25 the filing of the certificate of merger.

26 (b) If the surviving entity is a domestic corporation or a foreign
27 corporation in a merger that a domestic corporation is a constituent
28 party, after approval of the merger by the constituent limited
29 liability companies and constituent other business entities, the
30 surviving corporation shall file in the office of the Secretary of
31 State a copy of the agreement of merger and attachments required
32 under paragraph (1) of subdivision (g) of Section 1113. The
33 certificate of merger shall be executed and acknowledged by each
34 domestic constituent limited liability company by all general
35 members, unless a lesser number is provided in the articles of
36 organization of the limited liability company of the domestic
37 constituent limited liability company.

38 (c) A certificate of merger or the agreement of merger, as is
39 applicable under subdivisions (a) and (b), shall have the effect of
40 the filing of a certificate of cancellation for each disappearing

1 limited liability company, and no disappearing limited liability
2 company need take any action under Article 7 (commencing with
3 Section 17707.01) concerning dissolution as a result of the merger.

4 (d) If a disappearing other entity is a foreign corporation
5 qualified to transact intrastate business in this state, the filing of
6 the certificate of merger or agreement of merger, as is applicable,
7 by the foreign corporation shall automatically surrender its right
8 to transact intrastate business.

9 17710.15. (a) Unless a future effective date is provided in a
10 certificate of merger or the agreement of merger, if an agreement
11 of merger is required to be filed under Section 17710.14, in which
12 event the merger shall be effective at that future effective date, a
13 merger shall be effective upon the filing of the certificate of merger
14 or the agreement of merger, as is applicable, in the office of the
15 Secretary of State.

16 (b) (1) For all purposes, a copy of the certificate of merger duly
17 certified by the Secretary of State is conclusive evidence of the
18 merger of the constituent limited liability companies, either by
19 themselves or together with constituent other business entities,
20 into the surviving other business entity, or the constituent limited
21 liability companies or the constituent other business entities, or
22 both, into the surviving limited liability company.

23 (2) In a merger in which the surviving entity is a corporation in
24 a merger in which a domestic corporation and a domestic limited
25 liability company are parties to the merger, a copy of an agreement
26 of merger certified on or after the effective date by an official
27 having custody thereof has the same force in evidence as the
28 original and, except as against the state, is conclusive evidence of
29 the performance of all conditions precedent to the merger, the
30 existence on the effective date of the surviving corporation, and
31 the performance of the conditions necessary to the adoption of any
32 amendment to the articles of incorporation of the surviving
33 corporation, if applicable, contained in the agreement of merger.

34 17710.16. (a) Upon a merger of limited liability companies
35 or limited liability companies and other business entities pursuant
36 to this article, the separate existence of the disappearing limited
37 liability companies and disappearing other business entities ceases
38 and the surviving limited liability company or surviving other
39 business entity shall succeed, without other transfer, act or deed,
40 to all the rights and property, whether real, personal, or mixed, of

1 each of the disappearing limited liability companies and
2 disappearing other business entities, and shall be subject to all the
3 debts and liabilities of each in the same manner as if the surviving
4 limited liability company or surviving other business entity had
5 itself incurred them.

6 (b) All rights of creditors and all liens upon the property of each
7 of the constituent limited liability companies and constituent other
8 business entities shall be preserved unimpaired and may be
9 enforced against the surviving limited liability company or the
10 surviving other business entity to the same extent as if the debt,
11 liability, or duty which gave rise to that lien had been incurred or
12 contracted by the surviving limited liability company or the
13 surviving other business entity, provided that such liens upon the
14 property of a disappearing limited liability company or
15 disappearing other business entity shall be limited to the property
16 affected thereby immediately prior to the time the merger is
17 effective.

18 (c) Any action or proceeding pending by or against any
19 disappearing limited liability company or disappearing other
20 business entity may be prosecuted to judgment, which shall bind
21 the surviving limited liability company or surviving other business
22 entity, or the surviving limited liability company or surviving other
23 business entity may be proceeded against or be substituted in the
24 place of the disappearing limited liability company or disappearing
25 other business entity.

26 (d) Nothing in this article is intended to affect the liability a
27 member of a disappearing limited liability company may have in
28 connection with the debts and liabilities of the disappearing limited
29 liability company existing prior to the time the merger is effective.

30 17710.17. (a) If the surviving entity is a domestic limited
31 liability company or a domestic other business entity, the merger
32 proceedings with respect to that limited liability company or other
33 business entity and any domestic disappearing limited liability
34 company shall conform to the provisions of this article governing
35 the merger of domestic limited liability companies, but if the
36 surviving entity is a foreign limited liability company or a foreign
37 other business entity, then, subject to the requirements of
38 subdivision (d) and Article 11 (commencing with Section
39 17711.01) and, with respect to any domestic constituent
40 corporation, Section 1113, Chapter 12 (commencing with Section

1 1200), and Chapter 13 (commencing with Section 1300) of
2 Division 1 of Title 1 and, with respect to any domestic constituent
3 limited partnership, Article 11.5 (commencing with Section
4 15911.20) of Chapter 5.5 of Title 2, the merger proceedings may
5 be in accordance with the laws of the state or place of organization
6 of the surviving limited liability company or surviving other
7 business entity.

8 (b) If the surviving entity is a domestic limited liability company
9 or domestic other business entity, other than a domestic
10 corporation, the certificate of merger shall be filed as provided in
11 subdivision (a) of Section 17710.14, and thereupon, subject to
12 subdivision (a) of Section 17710.15, the merger shall be effective
13 as to each domestic constituent limited liability company and
14 domestic constituent other business entity. If the surviving entity
15 is a domestic corporation, the agreement of merger with
16 attachments shall be filed pursuant to subdivision (b) of Section
17 17710.14, and thereupon, subject to subdivision (a) of Section
18 17710.15, the merger shall be effective as to each domestic
19 constituent limited liability company and domestic constituent
20 other business entity unless another effective date is provided
21 pursuant to Article 11 (commencing with Section 17711.01), with
22 respect to any constituent corporation or constituent limited liability
23 company.

24 (c) If the surviving entity is a foreign limited liability company
25 or foreign other business entity, the merger shall become effective
26 in accordance with the laws of the jurisdiction where the surviving
27 limited liability company or surviving other business entity is
28 organized, but shall be effective as to any domestic disappearing
29 limited liability company as of the time of effectiveness in the
30 foreign jurisdiction upon the filing in this state of a certificate of
31 merger or agreement of merger pursuant to Section 17710.14.

32 (d) If a merger described in subdivision (c) or (d) also includes
33 a foreign disappearing limited liability company previously
34 registered for the transaction of intrastate business in this state
35 pursuant to Section 17708.02, the filing of the certificate of merger
36 or agreement of merger, as is applicable under Section 17710.14,
37 automatically has the effect of a cancellation of registration for
38 that foreign limited liability company pursuant to Section 17708.07
39 without the necessity of the filing of a certificate of cancellation.

1 (e) The provisions of subdivision (b) of Section 17710.12 and
2 Article 11 (commencing with Section 17711.01) apply to the rights
3 of the members of any of the constituent limited liability companies
4 that are domestic limited liability companies and of any domestic
5 limited liability company that is a parent of any foreign constituent
6 limited liability company.

7 (f) If the surviving entity is a foreign limited liability company
8 or foreign other business entity, the surviving entity shall file the
9 following with the Secretary of State:

10 (1) An agreement that it may be served in this state in a
11 proceeding for the enforcement of an obligation of any constituent
12 entity and in a proceeding to enforce the rights of any holder of a
13 dissenting interest or dissenting shares in a constituent domestic
14 limited liability company or domestic other business entity.

15 (2) An irrevocable appointment of the Secretary of State as its
16 agent for service of process, and an address to which process may
17 be forwarded.

18 (3) An agreement that it will promptly pay the holder of any
19 dissenting interest or dissenting share in a constituent domestic
20 limited liability company or domestic other business entity the
21 amount to which that person is entitled under the laws of this state.

22 17710.18. Whenever a domestic or foreign limited liability
23 company or other business entity having any real property in this
24 state merges with another limited liability company or other
25 business entity pursuant to the laws of this state or of the state or
26 place where any constituent limited liability company or constituent
27 other business entity was organized, and the laws of the state or
28 place of organization, including this state of any disappearing
29 limited liability company or disappearing other business entity
30 provide substantially that the making and filing of the agreement
31 of merger or certificate of merger vests in the surviving limited
32 liability company or surviving other business entity all the real
33 property of any disappearing limited liability company and
34 disappearing other business entity, the filing for record in the office
35 of the county recorder of any county in this state where any of the
36 real property of the disappearing limited liability company or
37 disappearing other business entity is located of either of the
38 following shall evidence record ownership in the surviving limited
39 liability company or surviving other business entity of all interest
40 of the disappearing limited liability company or disappearing other

1 business entity in and to the real property located in that county
2 in which both of the following occur:

3 (a) A certificate of merger certified by the Secretary of State,
4 or other certificate prescribed by the Secretary of State.

5 (b) A copy of the agreement of merger or certificate of merger,
6 certified by the Secretary of State or an authorized public official
7 of the state or place pursuant to the laws of which the merger is
8 effected.

9 17710.19. (a) Upon a merger pursuant to this article, a
10 surviving domestic or foreign limited liability company or other
11 business entity shall be deemed to have assumed the liability of
12 each disappearing domestic or foreign limited liability company
13 or other business entity that is taxed under Part 10 (commencing
14 with Section 17001) or Part 11 (commencing with Section 23001)
15 of Division 2 of the Revenue and Taxation Code for the following:

16 (1) To prepare and file, or to cause to be prepared and filed, tax
17 and information returns otherwise required of that disappearing
18 entity as specified in Chapter 2 (commencing with Section 18501)
19 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

20 (2) To pay any tax liability determined to be due.

21 (b) If the surviving entity is a domestic limited liability
22 company, domestic corporation, or registered limited liability
23 partnership or a foreign limited liability company, foreign limited
24 liability partnership, or foreign corporation that is registered or
25 qualified to do business in this state, the Secretary of State shall
26 notify the Franchise Tax Board of the merger.

27 Article 11. Dissenters' Rights

28
29
30 17711.01. (a) For purposes of this article, "reorganization"
31 refers to any of the following:

32 (1) A conversion pursuant to Article 10 (commencing with
33 Section 17710.01).

34 (2) A merger pursuant to Article 10 (commencing with Section
35 17710.01).

36 (3) The acquisition by one limited liability company in
37 exchange, in whole or in part, for its membership interests, or the
38 membership interests or equity securities of a limited liability
39 company or other business entity that is in control of the acquiring
40 limited liability company, of membership interests or equity

1 securities of another limited liability company or other business
2 entity if, immediately after the acquisition, the acquiring limited
3 liability company has control of the other limited liability company
4 or other business entity.

5 (4) The acquisition by one limited liability company in
6 exchange, in whole or in part, for its membership interests, or the
7 membership interests or equity securities of a limited liability
8 company or other business entity which is in control of the
9 acquiring limited liability company, or for its debt securities, or
10 debt securities of a limited liability company or other business
11 entity which is in control of the acquiring limited liability company,
12 that are not adequately secured and that have a maturity date in
13 excess of five years after the consummation of the acquisition, or
14 both, of all or substantially all of the assets of another limited
15 liability company or other business entity.

16 (b) For purposes of this article, “control” means the possession,
17 direct or indirect, of the power to direct or cause the direction of
18 the management and policies of a limited liability company or
19 other business entity.

20 17711.02. (a) If the approval of outstanding membership
21 interests is required for a limited liability company to participate
22 in a reorganization, pursuant to the limited liability company
23 agreement, or otherwise, then each member of the limited liability
24 company holding those interests may, by complying with this
25 article, require the limited liability company to purchase for cash,
26 at its fair market value, the interest owned by the member in the
27 limited liability company, if the interest is a dissenting interest as
28 defined in subdivision (b). The fair market value shall be
29 determined as of the day before the first announcement of the terms
30 of the proposed reorganization, excluding any appreciation or
31 depreciation in consequence of the proposed reorganization.

32 (b) As used in this article, “dissenting interest” means the
33 interest of a member that satisfies all of the following conditions:

34 (1) Either:

35 (A) Was not, immediately prior to the reorganization, either (i)
36 listed on any national securities exchange certified by the
37 Commissioner of Corporations under subdivision (o) of Section
38 25100, or (ii) listed on the list of OTC margin stocks issued by the
39 Board of Governors of the Federal Reserve System, provided that
40 in either instance the limited liability company whose outstanding

1 interests are so listed provides, in its notice to members requesting
2 their approval of the proposed reorganization, a summary of the
3 provisions of this section and Sections 17711.03, 17711.04,
4 17711.05, and 17711.06.

5 (B) If the interest is of a class of interests listed as described in
6 clause (i) or (ii) of subparagraph (A), demands for payment are
7 filed with respect to 5 percent or more of the outstanding interests
8 of that class.

9 (2) Was outstanding on the date for the determination of
10 members entitled to vote on the reorganization.

11 (3) Either:

12 (A) Was not voted in favor of the reorganization.

13 (B) If the interest is described in clause (i) or (ii) of subparagraph
14 (A) of paragraph (1), was voted against the reorganization;
15 provided, however, that subparagraph (A) rather than this
16 subparagraph applies in any event where the approval for the
17 proposed reorganization is sought by written consent rather than
18 at a meeting.

19 (4) The member has demanded that the interest be purchased
20 by the limited liability company at its fair market value in
21 accordance with Section 17711.03.

22 (5) The member has submitted the interest for endorsement, if
23 applicable, in accordance with Section 17711.04.

24 (c) As used in this article, “dissenting member” means the
25 recordholder of a dissenting interest, and includes an assignee of
26 record of that interest.

27 17711.03. (a) If members have a right under Section 17711.02,
28 subject to compliance with paragraphs (4) and (5) of subdivision
29 (b) of Section 17711.02, to require the limited liability company
30 to purchase their membership interests for cash, the limited liability
31 company shall mail to each member a notice of the approval of
32 the reorganization by the requisite vote or consent of the members,
33 within 10 days after the date of the approval, accompanied by a
34 copy of this section and Sections 17711.01, 17711.02, 17711.04,
35 and 17711.05, a statement of the price determined by the limited
36 liability company to represent the fair market value of its
37 outstanding interests, and a brief description of the procedure to
38 be followed if the member desires to exercise the member’s rights
39 under those sections. The statement of price constitutes an offer
40 by the limited liability company to purchase at the price stated any

1 dissenting interests as defined in subdivision (b) of Section
2 17711.02, unless they lose their status as dissenting interests under
3 Section 17711.11.

4 (b) Any member who has a right to require the limited liability
5 company to purchase the member's interest for cash under Section
6 17711.02, subject to compliance with paragraphs (4) and (5) of
7 subdivision (b) of Section 17711.02, and who desires the limited
8 liability company to purchase that interest, shall make written
9 demand upon the limited liability company for the purchase of
10 that interest and the payment to the member in cash of its fair
11 market value. The demand is not effective for any purpose unless
12 it is received by the limited liability company or any transfer agent
13 thereof (1) in the case of interests described in clause (i) or (ii) of
14 subparagraph (A) of paragraph (1) of subdivision (b) of Section
15 17711.02, not later than the date of the members' meeting to vote
16 upon the reorganization, or (2) in any other case, within 30 days
17 after the date on which notice of the approval of the reorganization
18 by the requisite vote or consent of the members is mailed by the
19 limited liability company to the members.

20 (c) The demand shall state the number or amount of the
21 member's interest in the limited liability company and shall contain
22 a statement of what the member claims to be the fair market value
23 of that interest on the day before the announcement of the proposed
24 reorganization. The statement of fair market value constitutes an
25 offer by the member to sell the interest at such price.

26 17711.04. Within 30 days after the date on which notice of the
27 approval of the outstanding interests of the limited liability
28 company is mailed to the member pursuant to subdivision (a) of
29 Section 17711.03, the member shall submit to the limited liability
30 company at its principal office or at the office of any transfer agent
31 thereof, if the interest is evidenced by a certificate, the member's
32 certificate representing the interest which the member demands
33 that the limited liability company purchase, to be stamped or
34 endorsed with a statement that the interest is a dissenting interest
35 or to be exchanged for certificates of appropriate denominations
36 so stamped or endorsed, or if the interest is not evidenced by a
37 certificate, written notice of the number or amount of interest which
38 the member demands that the limited liability company purchase.
39 Upon subsequent transfers of the dissenting interest on the books
40 of the limited liability company, the new certificates or other

1 written statement issued therefor shall bear a like statement,
2 together with the name of the original holder of the dissenting
3 interest.

4 17711.05. (a) If the limited liability company and the
5 dissenting member agree that the member's interest is a dissenting
6 interest and agree upon the price to be paid for the dissenting
7 interest, the dissenting member is entitled to the agreed price with
8 interest thereon at the legal rate on judgments from the date of
9 consummation of the reorganization. All agreements fixing the
10 fair market value of any dissenting member's interest as between
11 the limited liability company and that member shall be in writing
12 and filed in the records of the limited liability company.

13 (b) Subject to the provisions of Section 17711.08, payment of
14 the fair market value for a dissenting interest shall be made within
15 30 days after the amount has been agreed to or within 30 days after
16 any statutory or contractual conditions to the reorganization are
17 satisfied, whichever is later, and in the case of dissenting interests
18 evidenced by certificates of interest, subject to surrender of such
19 certificates of interest, unless provided otherwise by agreement.

20 17711.06. (a) If the limited liability company denies that a
21 membership interest is a dissenting interest, or the limited liability
22 company and a dissenting member fail to agree upon the fair
23 market value of a dissenting interest, then the member or any
24 interested limited liability company, within six months after the
25 date when notice of the approval of the reorganization by the
26 requisite vote or consent of the members was mailed to the
27 member, but not later, may file a complaint in the superior court
28 of the proper county praying the court to determine whether the
29 interest is a dissenting interest, or the fair market value of the
30 dissenting interest, or both, or may intervene in any action pending
31 on such a complaint.

32 (b) Two or more dissenting members may join as plaintiffs or
33 be joined as defendants in any of those actions and two or more
34 of those actions may be consolidated.

35 (c) On the trial of the action, the court shall determine the issues.
36 If the status of the membership interest as a dissenting interest is
37 in issue, the court shall first determine that issue. If the fair market
38 value of the dissenting interest is in issue, the court shall determine,
39 or shall appoint one or more impartial appraisers to determine, the
40 fair market value of the dissenting interest.

1 17711.07. (a) If the court appoints an appraiser or appraisers,
2 they shall proceed forthwith to determine the fair market value per
3 interest of the outstanding membership interests of the limited
4 liability company, by class if necessary. Within the time fixed by
5 the court, the appraisers, or a majority of them, shall make and file
6 a report in the office of the clerk of the court. Thereupon, on the
7 motion of any party, the report shall be submitted to the court and
8 considered on such additional evidence as the court considers
9 relevant. If the court finds the report reasonable, the court may
10 confirm it.

11 (b) If a majority of the appraisers appointed fails to make and
12 file a report within 30 days from the date of their appointment, or
13 within a further time as may be allowed by the court, or the report
14 is not confirmed by the court, the court shall determine the fair
15 market value per interest of the outstanding membership interests
16 of the limited liability company, by class if necessary.

17 (c) Subject to Section 17711.08, judgment shall be rendered
18 against the limited liability company for payment of an amount
19 equal to the fair market value, as determined by the court, of each
20 dissenting interest that any dissenting member who is a party, or
21 has intervened, is entitled to require the limited liability company
22 to purchase, with interest thereon at the legal rate on judgments
23 from the date of consummation of the reorganization.

24 (d) Any of those judgments shall be payable forthwith, provided,
25 however, that with respect to membership interests evidenced by
26 transferable certificates of interest, only upon the endorsement and
27 delivery to the limited liability company of those certificates
28 representing the interests described in the judgment. Any party
29 may appeal from the judgment.

30 (e) The costs of the action, including reasonable compensation
31 for the appraisers, to be fixed by the court, shall be assessed or
32 apportioned as the court considers equitable, but, if the appraisal
33 exceeds the price offered by the limited liability company, the
34 limited liability company shall pay the costs, including, in the
35 discretion of the court, if the value awarded by the court for the
36 dissenting interest is more than 125 percent of the price offered
37 by the limited liability company under subdivision (a) of Section
38 17711.02, attorney's fees and fees of expert witnesses.

39 17711.08. To the extent that the payment to dissenting members
40 of the fair market value of their dissenting interests would require

1 the dissenting members to return payment or a portion of the
2 payment by reason of Section 17711.09 or the Uniform Fraudulent
3 Transfer Act (Chapter 1 (commencing with Section 3439) of Title
4 2 of Part 2 of Division 4 of the Civil Code), then that payment or
5 portion thereof shall not be made and the dissenting members shall
6 become creditors of the limited liability company for the amount
7 not paid, together with interest thereon at the legal rate on
8 judgments until the date of payment, but subordinate to all other
9 creditors in any proceeding relating to the winding up and
10 dissolution of the limited liability company, such debt to be payable
11 when permissible.

12 17711.09. Any cash distributions made by a limited liability
13 company to a dissenting member after the date of consummation
14 of the reorganization, but prior to any payment by the limited
15 liability company for that dissenting member's interest, shall be
16 credited against the total amount to be paid by the limited liability
17 company for such dissenting interest.

18 17711.10. Except as expressly limited by this article, dissenting
19 members shall continue to have all the rights and privileges incident
20 to their interests immediately prior to the reorganization, including
21 limited liability, until payment by the limited liability company
22 for their dissenting interests. A dissenting member may not
23 withdraw a demand for payment unless the limited liability
24 company consents thereto.

25 17711.11. A dissenting interest loses its status as a dissenting
26 interest and the holder thereof ceases to be a dissenting member
27 and ceases to be entitled to require the limited liability company
28 to purchase the interest upon the happening of any of the following:

29 (a) The limited liability company abandons the reorganization.

30 Upon abandonment of the reorganization, the limited liability
31 company shall pay, on demand, to any dissenting member who
32 has initiated proceeding in good faith under this article, all
33 reasonable expenses incurred in such proceedings and reasonable
34 attorney's fees.

35 (b) The interest is transferred prior to its submission for
36 endorsement in accordance with Section 17711.04.

37 (c) The dissenting member and the limited liability company
38 do not agree upon the status of the interest as a dissenting interest
39 or upon the purchase price of the dissenting interest, and neither
40 files a complaint nor intervenes in a pending action, as provided

1 in Section 17711.06, within six months after the date upon which
2 notice of the approval of the reorganization by the requisite vote
3 or consent of members was mailed to the member.

4 (d) The dissenting member, with the consent of the limited
5 liability company, withdraws the member's demand for purchase
6 of the dissenting interest.

7 17711.12. If litigation is instituted to test the sufficiency or
8 regularity of the vote or consent of the members in authorizing a
9 reorganization, any proceedings under Sections 17711.06 and
10 17711.07 shall be suspended until final determination of that
11 litigation.

12 17711.13. (a) This article applies to the following:

13 (1) A domestic limited liability company formed on or after
14 January 1, 2014.

15 (2) A foreign limited liability company if the foreign limited
16 liability company was formed on or after January 1, 2014, or filed
17 an application to qualify to do business on or after January 1, 2014,
18 and members holding more than 50 percent of the voting power
19 held by all members of the foreign limited liability company reside
20 in this state.

21 (3) A limited liability company if the operating agreement so
22 provides or if all managers and a majority of the members, if it is
23 a manager-managed limited liability company, or a majority, if it
24 is a member-managed limited liability company, determine that
25 this article shall apply.

26 (b) This article does not apply to membership interests governed
27 by operating agreements whose terms and provisions specifically
28 set forth the amount to be paid in respect of those interests in the
29 event of a reorganization of the limited liability company, or to
30 any limited liability company with 35 or fewer members if all the
31 members have waived the application of this article in writing,
32 whether in an operating agreement or otherwise, provided that if,
33 at the time of the reorganization, the limited liability company had
34 more than 35 members, any waiver shall be ineffective as to that
35 reorganization.

36 17711.14. (a) No member of a limited liability company who
37 has a right under this article to demand payment of cash for the
38 interest owned by a member in a limited liability company shall
39 have any right at law or in equity to attack the validity of the
40 reorganization, or to have the reorganization set aside or rescinded,

1 except in an action to test whether the vote or consent of members
2 required to authorize or approve the reorganization has been
3 obtained in accordance with the procedures established therefor
4 by the operating agreement of the limited liability company.

5 (b) If one of the parties to a reorganization is directly or
6 indirectly controlled by, or under common control with, another
7 party to the reorganization, subdivision (a) shall not apply to any
8 member of the controlled party who has not demanded payment
9 of cash for the member's interest pursuant to this article; but if the
10 member institutes any action to attack the validity of the
11 reorganization or to have the reorganization set aside or rescinded,
12 the member shall not thereafter have any right to demand payment
13 of cash for the member's interest pursuant to this article.

14 (c) If one of the parties to a reorganization is directly or
15 indirectly controlled by, or under common control with, another
16 party to the reorganization, then, in any action to attack the validity
17 of the reorganization or to have the reorganization set aside or
18 rescinded, both of the following apply:

19 (1) A party to a reorganization that controls another party to a
20 reorganization shall have the burden of proving that the transaction
21 is just and reasonable as to the members of the controlled party.

22 (2) A person that controls two or more parties to a reorganization
23 shall have the burden of proving that the transaction is just and
24 reasonable as to the members of any party so controlled.

25 (d) Subdivisions (b) and (c) shall not apply if a majority of the
26 members other than members who are directly or indirectly
27 controlled by, or under common control with, another party to the
28 reorganization approve or consent to the reorganization.

29 (e) This section shall not prevent a member of a limited liability
30 company that is a party to a reorganization from bringing an action
31 against a manager of the limited liability company, the limited
32 liability company, or any person controlling a manager at law or
33 in equity as to any matters, including, without limitation, an action
34 for breach of fiduciary obligation or fraud, other than to attack the
35 validity of the reorganization or to have the reorganization set
36 aside or rescinded.

Article 12. Class Provisions

17712.01. The articles of organization or the operating agreement may provide for the creation of classes of members having those relative rights, powers, and duties as the articles of organization or operating agreement may provide, including rights, powers, and duties senior to other classes of members.

Article 13. Miscellaneous Provisions

17713.01. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

17713.02. This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Sec. 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

17713.03. This title does not affect an action commenced, proceeding brought, or right accrued or accruing before this title takes effect.

17713.04. (a) Except as otherwise specified in this title, this title shall apply to all *domestic* limited liability companies existing on or after January 1, 2014, *to all foreign limited liability companies registered with the Secretary of State prior to January 1, 2014, whose registrations have not been canceled as of January 1, 2014, to all foreign limited liability companies registered with the Secretary of State on or after January 1, 2014,* and to all actions taken by the managers or members of a limited liability company on or after that date.

(b) ~~This~~ Except as otherwise specified in this title, this title applies only to the acts or transactions by a limited liability company *or by the members or managers of the limited liability company* occurring, or contracts entered into *by the limited liability company or by the members or managers of the limited liability company*, on or after January 1, 2014. The prior law governs all acts or transactions by a limited liability company *or by the members or managers of the limited liability company* occurring,

1 or contracts entered into *by the limited liability company or by the*
2 *members or managers of the limited liability company*, prior to
3 that date.

4 (c) ~~Any~~ *Except as otherwise specified in this title*, any vote or
5 consent by the managers or members of a limited liability company
6 prior to January 1, 2014, shall be governed by prior law. If a
7 certificate or document is required to be filed in a public office of
8 this state relating to a vote or consent by the managers or members
9 of the limited liability company prior to January 1, 2014, it may
10 be filed after that date pursuant to *the filing requirements of this*
11 *title, even though the vote or consent is governed by prior law.*

12 (d) ~~This act~~ *title* does not cancel or otherwise affect the status
13 of, *or create a new filing requirement with the Secretary of State*
14 *or any other agency, board, commission, or department for*, any
15 *domestic* limited liability company in existence on December 31,
16 2013, *or any foreign limited liability company registered to*
17 *transact intrastate business in this state prior to January 1, 2014.*

18 (e) For the purposes of this section, “prior law” means Title 2.5
19 (commencing with Section 17000) as it ~~reads~~ *read* on December
20 31, 2013.

21 17713.05. This title, or any division, part, chapter, article, or
22 section thereof, may at any time be amended or repealed.

23 17713.06. (a) If a manager or member required by this title to
24 execute or file any document fails, after demand, to do so within
25 a reasonable time or refuses to do so, any other manager or
26 member, or any person appointed by a court of competent
27 jurisdiction, may prepare, execute, and file that document with the
28 Secretary of State.

29 (b) If there is any dispute concerning the filing of a document,
30 or the failure to file a document, any manager or member may
31 petition the superior court to direct the execution of the document.

32 (c) If the court finds that it is proper for the document to be
33 executed and that any person so designated has failed or refused
34 to execute the document, or if the court determines that any
35 document should be filed, it shall order a party to file the document,
36 on a form prescribed by the Secretary of State if appropriate, as
37 ordered by the court.

38 (d) In any action under this section, if the court finds the failure
39 of the manager or member to comply with the requirement to file
40 any document to have been without justification, the court may

1 award an amount sufficient to reimburse the managers or members
2 bringing the action for the reasonable expenses incurred by them,
3 including attorney's fees, in connection with the action or
4 proceeding.

5 (e) Any member who is not a manager, or any person filing any
6 document under this section, shall state the statutory authority after
7 the signature on the appropriate document.

8 17713.07. (a) Every limited liability company that neglects,
9 fails, or refuses to keep or cause to be kept or maintained the
10 documents, books, and records required by Section 17701.13 to
11 be kept or maintained shall be subject to a penalty of twenty-five
12 dollars (\$25) for each day that the failure or refusal continues,
13 beginning 30 days after receipt of written request by any member
14 that the duty be performed, up to a maximum of one thousand five
15 hundred dollars (\$1,500). The penalty shall be paid to the member
16 or members jointly making the request for performance of the duty
17 and damaged by the neglect, failure, or refusal, if suit therefor is
18 commenced within 90 days after the written request is made; but
19 the maximum daily penalty because of failure to comply with any
20 number of separate requests made on any one day or for the same
21 act shall be two hundred fifty dollars (\$250).

22 (b) Upon the failure of a limited liability company, or a foreign
23 limited liability company registered to transact intrastate business
24 in this state, to file the statement required by Section 17702.09,
25 the Secretary of State shall provide a notice of that delinquency
26 to the limited liability company or foreign limited liability
27 company. The notice shall also contain information concerning
28 the application of this section, advise the limited liability company
29 or foreign limited liability company of the penalty imposed by this
30 subdivision for failure to timely file the required statement after
31 notice of delinquency has been provided by the Secretary of State,
32 and shall advise the limited liability company or foreign limited
33 liability company of its right to request relief from the Secretary
34 of State because of reasonable cause or unusual circumstances that
35 justify the failure to file. If, within 60 days after providing notice
36 of the delinquency, a statement pursuant to Section 17702.09 has
37 not been filed by the limited liability company or foreign limited
38 liability company, the limited liability company or foreign limited
39 liability company shall be subject to a penalty of two hundred fifty
40 dollars (\$250).

17713.08. Any penalty prescribed by Section 17713.07 shall be in addition to any remedy by injunction or action for damages or by writ of mandate for the nonperformance of acts and duties enjoined by law upon the limited liability company or its managers, including, without limitation, the remedies provided in subdivisions (f) and (g) of Section 17704.10. The court in which an action for any penalty is brought may reduce, remit, or suspend the penalty on any terms and conditions as it may deem reasonable when it is made to appear that the neglect, failure, or refusal was inadvertent or excusable.

17713.09. (a) Upon the failure of a limited liability company to file the statement required by Section 17702.09, the Secretary of State shall provide a notice of the delinquency to the limited liability company. The notice shall also contain information concerning the application of this section, advise the limited liability company of the penalty imposed by Section 19141 of the Revenue and Taxation Code for failure to timely file the required statement after notice of delinquency has been mailed by the Secretary of State, and shall advise the limited liability company of its right to request relief from the Secretary of State because of reasonable cause or unusual circumstances that justify such failure to file. If, within 60 days after providing notice of the delinquency, a statement pursuant to Section 17702.09 has not been filed by the limited liability company, the Secretary of State shall certify the name of such limited liability company to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the limited liability company the penalty provided in Section 19141 of the Revenue and Taxation Code.

(c) The penalty provided by Section 19141 of the Revenue and Taxation Code shall not apply to a limited liability company that on or prior to the date of certification pursuant to subdivision (a) has been canceled, has been merged into another limited liability company, other business entity, foreign other business entity, or foreign limited liability company, or has converted into another foreign business entity, foreign other business entity, or foreign limited liability company.

(d) The penalty herein provided shall not apply and the Secretary of State need not provide notice of the delinquency to a limited liability company the powers, rights, and privileges of which have

1 been suspended by the Franchise Tax Board pursuant to Section
2 23301, 23301.5, or 23775 of the Revenue and Taxation Code on
3 or prior to, and remain suspended on, the last day of the filing
4 period pursuant to Section 17702.09. The Secretary of State need
5 not provide notice of the filing requirement pursuant to Section
6 17702.09 to a limited liability company the powers, rights, and
7 privileges of which have been so suspended by the Franchise Tax
8 Board on or prior to, and remain suspended on, the day the
9 Secretary of State prepares the notice for sending.

10 (e) If, after certification pursuant to subdivision (a) the Secretary
11 of State finds (1) the required statement was filed or the required
12 fee was paid before the expiration of the 60-day period after
13 providing notice of the delinquency, or (2) the failure to provide
14 notice of delinquency was due to an error of the Secretary of State,
15 the Secretary of State shall promptly decertify the name of the
16 limited liability company to the Franchise Tax Board. The
17 Franchise Tax Board shall then promptly abate any penalty
18 assessed against the limited liability company pursuant to Section
19 19141 of the Revenue and Taxation Code.

20 (f) If the Secretary of State determines that the failure of a
21 limited liability company to file the statement required by Section
22 17702.09 is excusable because of reasonable cause or unusual
23 circumstances that justify such failure, the Secretary of State may
24 waive the penalty imposed by this section and by Section 19141
25 of the Revenue and Taxation Code, in which case the Secretary
26 of State shall not certify the name of the limited liability company
27 to the Franchise Tax Board, or if already certified, the Secretary
28 of State shall promptly decertify the name of the limited liability
29 company.

30 17713.10. (a) A limited liability company that (1) fails to file
31 a statement pursuant to Section 17702.09 for an applicable filing
32 period, (2) has not filed a statement pursuant to Section 17702.09
33 during the preceding 24 months, and (3) was certified for penalty
34 pursuant to Section 17713.09 for the same filing period, shall be
35 subject to suspension pursuant to this section rather than to penalty
36 pursuant to Section 17713.09.

37 (b) When subdivision (a) is applicable, the Secretary of State
38 shall notify the limited liability company that its powers, rights,
39 and privileges will be suspended after 60 days if it fails to file a
40 statement pursuant to Section 17702.09.

(c) After the expiration of the 60-day period without any statement filed pursuant to Section 17702.09, the Secretary of State shall notify the Franchise Tax Board of the suspension, and shall provide a notice of the suspension to the limited liability company and thereupon, except for the purpose of amending the articles of organization to set forth a new name, the powers, rights, and privileges of the limited liability company are suspended.

(d) A statement pursuant to Section 17702.09 may be filed notwithstanding suspension of the powers, rights, and privileges pursuant to this section or Section 23301 or 23301.5 of the Revenue and Taxation Code. Upon the filing of a statement pursuant to Section 17702.09 by a limited liability company that has suffered suspension pursuant to this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the limited liability company may thereupon be relieved from suspension unless the limited liability company is held in suspension by the Franchise Tax Board by reason of Section 23301 or 23301.5 of the Revenue and Taxation Code.

17713.11. (a) Sections 17713.09 and 17713.10 apply to foreign limited liability companies with respect to the statements required to be filed by Section 17702.09. For this purpose, the suspension of the powers, rights, and privileges of a domestic limited liability company shall mean the forfeiture of the exercise of the powers, rights, and privileges of a foreign limited liability company in this state.

(b) The forfeiture of the exercise of the powers, rights, and privileges of a foreign limited liability company in this state as used in subdivision (a) does not prohibit the transaction of business in this state by a foreign limited liability company if the business transacted subsequent to the forfeiture would not, considered as an entirety, require the foreign limited liability company to obtain a certificate of registration pursuant to Section 17708.02.

17713.12. (a) A limited liability company is liable for a civil penalty in an amount not exceeding one million dollars (\$1,000,000) if the limited liability company does both of the following:

(1) Has actual knowledge that a member, officer, manager, or agent of the limited liability company does any of the following:

1 (A) Makes, publishes, or posts, or has made, published, or
2 posted, either generally or privately to the shareholders or other
3 persons, either of the following:

4 (i) An oral, written, or electronically transmitted report, exhibit,
5 notice, or statement of its affairs or pecuniary condition that
6 contains a material statement or omission that is false and intended
7 to give membership shares in the limited liability company a
8 materially greater or a materially less apparent market value than
9 they really possess.

10 (ii) An oral, written, or electronically transmitted report,
11 prospectus, account, or statement of operations, values, business,
12 profits, or expenditures that includes a material false statement or
13 omission intended to give membership shares in the limited liability
14 company a materially greater or a materially less apparent market
15 value than they really possess.

16 (B) Refuses or has refused to make any book entry or post any
17 notice required by law in the manner required by law.

18 (C) Misstates or conceals or has misstated or concealed from a
19 regulatory body a material fact in order to deceive a regulatory
20 body to avoid a statutory or regulatory duty, or to avoid a statutory
21 or regulatory limit or prohibition.

22 (2) Within 30 days after actual knowledge is acquired of the
23 actions described in paragraph (1), the limited liability company
24 knowingly fails to do both of the following:

25 (A) Notify the Attorney General or appropriate government
26 agency in writing, unless the limited liability company has actual
27 knowledge that the Attorney General or appropriate government
28 agency has been notified.

29 (B) Notify its members and investors in writing, unless the
30 limited liability company has actual knowledge that the members
31 and investors have been notified.

32 (b) The requirement for notification under this section is not
33 applicable if the action taken or about to be taken by the limited
34 liability company, or by a member, officer, manager, or agent of
35 the limited liability company under paragraph (1) of subdivision
36 (a), is abated within the time prescribed for reporting, unless the
37 appropriate government agency requires disclosure by regulation.

38 (c) If the action reported to the Attorney General pursuant to
39 this section implicates the government authority of an agency other

1 than the Attorney General, the Attorney General shall promptly
2 forward the written notice to that agency.

3 (d) If the Attorney General was not notified pursuant to
4 subparagraph (A) of paragraph (2) of subdivision (a), but the
5 limited liability company reasonably and in good faith believed
6 that it had complied with the notification requirements of this
7 section by notifying a government agency listed in paragraph (5)
8 of subdivision (e), no penalties shall apply.

9 (e) For purposes of this section:

10 (1) “Manager” means a person defined by subdivision (m) of
11 Section 17701.01 having both of the following:

12 (A) Management authority over the limited liability company.

13 (B) Significant responsibility for an aspect of the limited liability
14 company that includes actual authority for the financial operations
15 or financial transactions of the limited liability company.

16 (2) “Agent” means a person or entity authorized by the limited
17 liability company to make representations to the public about the
18 limited liability company’s financial condition and who is acting
19 within the scope of the agency when the representations are made.

20 (3) “Member” means a person as defined by subdivision (o) of
21 Section 17701.01 that is a member of the limited liability company
22 at the time the disclosure is required pursuant to subparagraph (B)
23 of paragraph (2) of subdivision (a).

24 (4) “Notify its members” means to give sufficient description
25 of an action taken or about to be taken that would constitute acts
26 or omissions as described in paragraph (1) of subdivision (a). A
27 notice or report filed by a limited liability company with the United
28 States Securities and Exchange Commission that relates to the
29 facts and circumstances giving rise to an obligation under
30 paragraph (1) of subdivision (a) shall satisfy all notice requirements
31 arising under paragraph (2) of subdivision (a) but shall not be the
32 exclusive means of satisfying the notice requirements, provided
33 that the Attorney General or appropriate agency is informed in
34 writing that the filing has been made together with a copy of the
35 filing or an electronic link where it is available online without
36 charge.

37 (5) “Appropriate government agency” means an agency on the
38 following list that has regulatory authority with respect to the
39 financial operations of a limited liability company:

40 (A) Department of Corporations.

1 (B) Department of Insurance.

2 (C) Department of Financial Institutions.

3 (D) Department of Managed Health Care.

4 (E) United States Securities and Exchange Commission.

5 (6) “Actual knowledge of the limited liability company” means
6 the knowledge a member, officer, or manager of a limited liability
7 company actually possesses or does not consciously avoid
8 possessing, based on an evaluation of information provided
9 pursuant to the limited liability company’s disclosure controls and
10 procedures.

11 (7) “Refuse to make a book entry” means the intentional decision
12 not to record an accounting transaction when all of the following
13 conditions are satisfied:

14 (A) The independent auditors required recordation of an
15 accounting transaction during the course of an audit.

16 (B) The audit committee of the limited liability company has
17 not approved the independent auditor’s recommendation.

18 (C) The decision is made for the primary purpose of rendering
19 the financial statements materially false or misleading.

20 (8) “Refuse to post any notice required by law” means an
21 intentional decision not to post a notice required by law when all
22 of the following conditions exist:

23 (A) The decision not to post the notice has not been approved
24 by the limited liability company’s audit committee.

25 (B) The decision is intended to give the membership shares in
26 the limited liability company a materially greater or a materially
27 less apparent market value than they really possess.

28 (9) “Misstate or conceal material facts from a regulatory body”
29 means an intentional decision not to disclose material facts when
30 all of the following conditions exist:

31 (A) The decision not to disclose material facts has not been
32 approved by the limited liability company’s audit committee.

33 (B) The decision is intended to give the membership shares in
34 the limited liability company a materially greater or a materially
35 less apparent market value than they really possess.

36 (10) “Material false statement or omission” means an untrue
37 statement of material fact or an omission to state a material fact
38 necessary in order to make the statements made under the
39 circumstances under which they were made not misleading.

(11) “Officer” means a person appointed pursuant to Section 17703.02, except an officer of a specified subsidiary limited liability company who is not also an officer of the parent limited liability company.

(f) This section only applies to limited liability companies that are issuers, as defined in Section 2 of the federal Sarbanes-Oxley Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.

17713.13. This title shall become operative on January 1, 2014.

SEC. 21. Section 25005.1 of the Corporations Code is amended to read:

25005.1. “Entity conversion transaction” means a conversion pursuant to Section 1151, 1157, 15911.02, 15911.08, 16902, 16908, 17710.02, or 17710.08 or a conversion that occurs entirely out of state, unless the interests in the entity resulting from the conversion to be held by the equity holders of the entity being converted as a result of the conversion are not securities. For purposes of Sections 25103 and 25120 an entity conversion transaction is not a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or an exchange of securities by the issuer with its existing security holders exclusively.

SEC. 22. Section 12190 of the Government Code is amended to read:

12190. The limited liability company filing fees are the following:

(a) Issuing a certificate of reservation of limited liability company name: Ten dollars (\$10).

(b) Filing articles of organization of a limited liability company: Seventy dollars (\$70).

(c) Filing an application for registration as a foreign limited liability company: Seventy dollars (\$70).

(d) Filing a certificate of amendment to the articles of organization of a limited liability company: Thirty dollars (\$30).

(e) Filing restated articles of organization of a limited liability company: Thirty dollars (\$30).

(f) Filing an amendment to the application for registration as a foreign limited liability company: Thirty dollars (\$30).

1 (g) Filing a certificate of correction for a limited liability
2 company: Thirty dollars (\$30).

3 (h) Filing a certificate of continuation for a limited liability
4 company after a certificate of dissolution has been filed: Thirty
5 dollars (\$30).

6 (i) Filing a certificate of merger for a merger of a limited liability
7 company with one or more other limited liability companies:
8 Seventy dollars (\$70).

9 (j) Filing a certificate of merger for a merger of one or more
10 limited liability companies with one or more other business entities:
11 One hundred fifty dollars (\$150).

12 (k) Filing the statement of information of a limited liability
13 company or of a foreign limited liability company pursuant to
14 Section 17702.09 of the Corporations Code: Twenty dollars (\$20).

15 (l) Filing changes to any statement of information: No fee.

16 (m) Filing a certificate of dissolution or a certificate of
17 cancellation of articles of organization for purposes of the
18 dissolution of a limited liability company: No fee.

19 (n) Filing a certificate of cancellation for purposes of the
20 cancellation of registration of a foreign limited liability company:
21 No fee.

22 (o) Filing any instrument by or on behalf of a limited liability
23 company, unless another fee is specified by law or the law specifies
24 that no fee is to be charged: Thirty dollars (\$30).

25 SEC. 23. Section 12197 of the Government Code is amended
26 to read:

27 12197. The Secretary of State shall charge and collect, as
28 applicable, fees for the following:

29 (a) Service of process, as provided in Section 15800 of the
30 Corporations Code, for every partnership other than a foreign
31 limited partnership subject to Article 9 (commencing with Section
32 15691) of Chapter 3 or Article 9 (commencing with Section
33 15909.01) of Chapter 5.5 of Title 2 of the Corporations Code or a
34 commercial banking partnership established and transacting
35 business in a place without the United States, which is domiciled
36 without this state and has no regular place of business within the
37 state: Fifty dollars (\$50).

38 (b) Service of process for each registered limited liability
39 partnership whose principal office is not in this state and each

1 foreign limited liability partnership registered under Section 16959
2 of the Corporations Code: Fifty dollars (\$50).

3 (c) Acceptance of copies of process against a corporation, firm,
4 partnership, limited liability company, association, business trust,
5 or natural person: Fifty dollars (\$50), unless another fee is specified
6 by law or the law specifies that no fee is to be charged.

7 (d) Filing a statement of resignation by an individual or entity
8 previously designated as an agent for service of process by a
9 limited liability company pursuant to the Corporations Code or
10 the Financial Code: No fee.

11 SEC. 24. Section 12262 of the Government Code is amended
12 to read:

13 12262. If the Secretary of State determines that the name of a
14 business entity that has been ordered by a court to be reinstated
15 creates a conflict under subdivision (b) of Section 201, subdivision
16 (b) of Section 5122, subdivision (c) of Section 7122, subdivision
17 (b) of Section 9122, subdivision (b) of Section 12302, or
18 subdivision (b) of Section 17701.08 of the Corporations Code or
19 any related statute, the reinstatement shall be subject to the business
20 entity filing an amendment to change its name to eliminate the
21 conflict.

22 SEC. 25. Section 1192.95 of the Insurance Code is amended
23 to read:

24 1192.95. (a) Notwithstanding Section 1100, an insurer may
25 make excess funds investments in investment pools and cash
26 management pools established pursuant to this section. The pools
27 shall meet all of the following standards:

28 (1) All participants in a pool shall each be affiliated with one
29 another within the meaning of subdivision (a) of Section 1215 and
30 shall all be insurers, or a pension plan or profit-sharing plan of a
31 participant or affiliate.

32 (2) The pools shall be a corporation, partnership, trust, limited
33 liability company, or business trust domiciled in the United States
34 with all assets held in accordance with Section 1104.9 and shall
35 be maintained in one or more accounts in the name of or on behalf
36 of the investment pool. Pool assets shall be held under a bank
37 custody agreement that states and recognizes the claims and rights
38 of each participant, acknowledges that the pool assets are held
39 solely for the benefit of each participant in proportion to the
40 aggregate amount of its pool investments, and states that the

1 investments shall not be commingled with the general assets of
2 the custodian or any other person. The pool manager shall be an
3 insurer as defined by Section 826 or a business entity registered
4 as an investment adviser under the federal Investment Act of 1940.
5 The fiduciary duties a manager owes to the limited liability
6 company and its members are those of a partner to a partnership.
7 This duty may not be restricted by agreement.

8 (3) Any management fee shall be subject to disapproval by the
9 commissioner. Costs directly incurred in acquiring or selling assets,
10 such as commissions, transaction fees, or custodial fees, are not
11 management fees and may be charged by the pool to the
12 participants as long as these fees are on a direct cost reimbursement
13 basis. All costs shall be apportioned to each participant in
14 proportion to its interest in the pool.

15 (4) All shares of the pool shall be of the same class with equal
16 rights, preferences, and privileges. Each share shall participate
17 equally in dividends and distributions declared by the pool on
18 liquidation in proportion to each participant's interest. When issued,
19 the shares shall be fully paid and nonassessable and shall have no
20 preemptive, conversion, or exchange rights.

21 (5) Each participant shall be entitled to require the pool to
22 redeem all or any portion of the shares held by the participant on
23 demand without penalty or assessment on any business day.

24 (6) All assets of a cash management pool shall be assets that
25 participant insurers may lawfully acquire individually and shall
26 be: (A) debt obligations issued by or on behalf of the United States,
27 its territories and possessions, the District of Columbia, and states
28 or their political subdivisions, agencies, and instrumentalities,
29 including industrial development obligations, having a maturity
30 not exceeding one year; (B) corporate debt obligations, other than
31 debt obligations issued, assumed, guaranteed, or insured by a
32 participant or by any affiliate of a participant, having a maturity
33 not exceeding one year and that are rated One or Two by the
34 Securities Valuation Office of the National Association of
35 Insurance Commissioners; or (C) accounts, deposits, or obligations
36 of banks or savings and loan associations insured by an agency or
37 instrumentality of the federal government.

38 (7) All assets of an investment pool shall be: (A) investments
39 that are authorized under Section 1191, other than stock issued,
40 assumed, guaranteed, or insured by a participant or any affiliate

1 of a participant; (B) accounts, deposits, or obligations of banks or
2 savings and loan associations insured by an agency or
3 instrumentality of the federal government; or (C) investments that
4 are authorized under Section 1192, other than securities or notes
5 issued, assumed, guaranteed, or insured by a participant or any
6 affiliate of a participant, or under Section 1194.5 or 1241.

7 (8) The assets of pools shall be required to meet the requirements
8 of and be authorized for investment by a domestic incorporated
9 insurer under Article 3 (commencing with Section 1170) or this
10 article.

11 (9) No pool shall make investments in purchases of, or loans
12 upon, more than 30 percent of the total in par value or more than
13 30 percent of the total number of outstanding shares of the capital
14 stock of any one corporation.

15 (10) Transactions between the pool and its participants shall
16 not be deemed to be material for purposes of subdivision (d) of
17 Section 1215.4 or subdivision (b) of Section 1215.5. Investment
18 activity of pools and transactions between pools and participants
19 shall be reported in the annual registration statement required by
20 Section 1215.4 and pursuant to Section 1215.5.

21 (11) Participation in an investment pool shall be subject to a
22 written pooling agreement that shall be approved by the
23 participant's board of directors and shall provide that (A) the
24 underlying assets of the pool shall not be commingled with the
25 general assets of the pool manager or any other person; (B) each
26 participant must own an undivided interest in the underlying assets
27 of the pool; (C) the underlying assets of the investment pool are
28 held solely for the benefit of each participant; and (D) the pool
29 manager shall make the records of the investment pool available
30 for inspection by the commissioner. Pool agreements shall also
31 specify what type of share participants hold to evidence their
32 beneficial interest in the pool's assets. Prior to the execution of a
33 pool agreement, a participating insurer's board of directors must
34 approve the agreement only after having received a written opinion
35 from an independent outside counsel explaining the ramifications
36 and possible effects that a declaration of insolvency by a participant
37 will have on the insurer's share of the investment pool.

38 (12) No participant insurer may invest more than 10 percent of
39 admitted assets in a single pool or more than 25 percent of admitted
40 assets in all pools combined.

1 (13) Each participant's proportionate share of the assets of a
2 pool shall be deemed to be the direct holdings of that participant
3 for purposes of determining compliance with the investment
4 requirements of this code and shall be reported as such on required
5 quarterly and annual reports. Pools operated as limited liability
6 companies pursuant to Title 2.6 (commencing with Section
7 17701.01) of the Corporations Code shall conform their
8 investments to this paragraph and the requirements of Sections
9 1200 and 1201.

10 (14) The pool manager shall compile and maintain detailed
11 accounting records setting forth (A) the cash received and
12 disbursements reflecting each participant's proportional investment
13 in the investment pool; (B) a complete description of all underlying
14 assets of the investment pool including amount, interest rate, and
15 maturity date, if any, and other appropriate designations; and (C)
16 other records that, on a daily basis, will allow the commissioner
17 and the participants to verify each participant's investments in the
18 pool.

19 (15) Pools shall not borrow or loan assets, except for
20 securities-lending arrangements that are otherwise lawful for
21 insurer participants of the pool.

22 (b) As used in this section, "share" means stock, participation
23 unit, certificate of interest, or other evidence of beneficial
24 ownership in the pool, whether evidenced by an instrument or by
25 a book entry maintained by the pool.

26 (c) The commissioner shall have the authority to review any
27 pool agreement and to disapprove any agreement that does not
28 comply with this section. The commissioner shall have the
29 authority to review the operation of any pool and to order
30 compliance with this section. The commissioner shall have the
31 authority to disallow, as an admitted asset, any pool investment
32 not in compliance with this section. The commissioner may impose
33 a fee upon any pool to recoup the actual cost of review under this
34 section.

35 SEC. 26. Section 17941 of the Revenue and Taxation Code is
36 amended to read:

37 17941. (a) For each taxable year beginning on or after January
38 1, 1997, a limited liability company doing business in this state
39 (as defined in Section 23101) shall pay annually to this state a tax
40 for the privilege of doing business in this state in an amount equal

1 to the applicable amount specified in subdivision (d) of Section
2 23153 for the taxable year.

3 (b) (1) In addition to any limited liability company that is doing
4 business in this state and is therefore subject to the tax imposed
5 by subdivision (a), for each taxable year beginning on or after
6 January 1, 1997, a limited liability company shall pay annually
7 the tax prescribed in subdivision (a) if articles of organization have
8 been accepted, or a certificate of registration has been issued, by
9 the office of the Secretary of State. The tax shall be paid for each
10 taxable year, or part thereof, until a certificate of cancellation of
11 registration or of articles of organization is filed on behalf of the
12 limited liability company with the office of the Secretary of State.

13 (2) If a taxpayer files a return with the Franchise Tax Board that
14 is designated as its final return, the Franchise Tax Board shall
15 notify the taxpayer that the annual tax shall continue to be due
16 annually until a certificate of dissolution is filed with the Secretary
17 of State pursuant to Section 17707.08 of the Corporations Code
18 or a certificate of cancellation is filed with the Secretary of State
19 pursuant to Section 17708.06 of the Corporations Code.

20 (c) The tax assessed under this section shall be due and payable
21 on or before the 15th day of the fourth month of the taxable year.

22 (d) For purposes of this section, “limited liability company”
23 means an organization, other than a limited liability company that
24 is exempt from the tax and fees imposed under this chapter
25 pursuant to Section 23701h or Section 23701x, that is formed by
26 one or more persons under the law of this state, any other country,
27 or any other state, as a “limited liability company” and that is not
28 taxable as a corporation for California tax purposes.

29 (e) Notwithstanding anything in this section to the contrary, if
30 the office of the Secretary of State files a certificate of cancellation
31 pursuant to Section 17707.02 of the Corporations Code for any
32 limited liability company, then paragraph (1) of subdivision (f) of
33 Section 23153 shall apply to that limited liability company as if
34 the limited liability company were properly treated as a corporation
35 for that limited purpose only, and paragraph (2) of subdivision (f)
36 of Section 23153 shall not apply. Nothing in this subdivision
37 entitles a limited liability company to receive a reimbursement for
38 any annual taxes or fees already paid.

39 (f) (1) Notwithstanding any provision of this section to the
40 contrary, a limited liability company that is a small business solely

1 owned by a deployed member of the United States Armed Forces
2 shall not be subject to the tax imposed under this section for any
3 taxable year the owner is deployed and the limited liability
4 company operates at a loss or ceases operation.

5 (2) The Franchise Tax Board may promulgate regulations as
6 necessary or appropriate to carry out the purposes of this
7 subdivision, including a definition for “ceases operation.”

8 (3) For the purposes of this subdivision, all of the following
9 definitions apply:

10 (A) “Deployed” means being called to active duty or active
11 service during a period when a Presidential Executive order
12 specifies that the United States is engaged in combat or homeland
13 defense. “Deployed” does not include either of the following:

14 (i) Temporary duty for the sole purpose of training or processing.

15 (ii) A permanent change of station.

16 (B) “Operates at a loss” means a limited liability company’s
17 expenses exceed its receipts.

18 (C) “Small business” means a limited liability company with
19 total income from all sources derived from, or attributable, to the
20 state of two hundred fifty thousand dollars (\$250,000) or less.

21 (4) This subdivision shall become inoperative for taxable years
22 beginning on or after January 1, 2018.

23 SEC. 27. Section 17947 of the Revenue and Taxation Code is
24 amended to read:

25 17947. (a) A limited liability company shall not be subject to
26 the taxes imposed by this chapter for a taxable year if the limited
27 liability company does all of the following:

28 (1) Files with the Franchise Tax Board a timely final annual tax
29 return for the preceding taxable year.

30 (2) Does not do business in this state after the end of the taxable
31 year for which the final annual tax return was filed.

32 (3) Files a certificate of dissolution with the Secretary of State,
33 pursuant to Section 17707.08 of the Corporations Code, or a
34 certificate of cancellation with the Secretary of State pursuant to
35 Section 17708.06 of the Corporations Code, before the end of the
36 12-month period beginning with the date the final annual tax return
37 was filed.

38 (b) For purposes of this section, a “final annual tax return” is a
39 return described in Section 18633.5 that is filed on or before the
40 due date of the return, as extended, that the taxpayer designates in

1 the manner prescribed by the Franchise Tax Board as the taxpayer's
2 final return for purposes of the tax imposed under this chapter. For
3 purposes of this chapter, a "final annual tax return" is a return filed
4 pursuant to Section 18633.5 where the taxpayer is not required to
5 file a subsequent return to reflect the imposition of tax under this
6 chapter.

7 SEC. 28. Section 19141 of the Revenue and Taxation Code is
8 amended to read:

9 19141. Upon certification by the Secretary of State pursuant
10 to subdivision (a) of Section 2204 or subdivision (a) of Section
11 17713.09 of the Corporations Code, the Franchise Tax Board shall
12 assess a penalty of two hundred fifty dollars (\$250). Upon
13 certification by the Secretary of State pursuant to subdivision (a)
14 of Section 6810 or subdivision (a) of Section 8810 of the
15 Corporations Code, the Franchise Tax Board shall assess a penalty
16 of fifty dollars (\$50). Any penalty assessed under this section shall
17 be a final assessment due and payable at the time of assessment
18 but no interest shall accrue thereon. The assessment shall be
19 collected as other taxes, interest, and penalties are collected by the
20 Franchise Tax Board unless the Secretary of State decertifies the
21 name of the corporation as provided in subdivision (e) or (f) of
22 Section 2204, subdivision (e) of Section 6810, subdivision (e) of
23 Section 8810, or subdivision (e) of Section 17713.08, of the
24 Corporations Code.

25 SEC. 29. Section 23332 of the Revenue and Taxation Code is
26 amended to read:

27 23332. (a) Except in the case of a taxpayer subject to the
28 provisions of Section 23222a, any taxpayer which is dissolved or
29 withdraws from the state during any taxable year shall pay a tax
30 only for the months of the taxable year which precede the effective
31 date of the dissolution or withdrawal, according to or measured
32 by (1) the net income of the preceding income year or (2) a
33 percentage of net income determined by ascertaining the ratio
34 which the months of the taxable year, preceding the effective date
35 of dissolution or withdrawal, bears to the months of the income
36 year, whichever is the lesser amount. The taxes levied under this
37 chapter shall not be subject to abatement or refund because of the
38 cessation of business or corporate existence of any taxpayer
39 pursuant to a reorganization, consolidation, or merger (as defined
40 by Section 23251). In any event, each corporation shall pay a tax

1 not subject to offset for the period in an amount equal to the
2 minimum tax prescribed by Section 23153.

3 (b) The provisions of subdivision (a) shall be applied only with
4 respect to taxpayers which dissolve or withdraw before January
5 1, 1973. On and after that date, the tax for the taxable year in which
6 the taxpayer ceases doing business, dissolves, or withdraws shall
7 be determined under the appropriate provisions of Section 23151.1,
8 23153, 23181, or 23183, whichever is applicable.

9 (c) (1) A corporation shall not be subject to the minimum
10 franchise tax imposed by this chapter for a taxable year if the
11 corporation does all of the following:

12 (A) Files a timely final franchise tax return for a taxable year
13 with the Franchise Tax Board.

14 (B) Does not do business in this state after the end of the taxable
15 year for which the final franchise tax return was filed.

16 (C) (i) In the case of a corporation other than a corporation
17 described in clause (ii), files a certificate of dissolution or surrender
18 with the Secretary of State, in accordance with Sections 1809,
19 1905, 2112, 6615, 8615, and 12635 of the Corporations Code and
20 Section 3126 of the Financial Code, before the end of the 12-month
21 period beginning with the date the final franchise tax return was
22 filed.

23 (ii) In the case of a limited liability company that is a corporation
24 pursuant to subdivision (c) of Section 23038, files a certificate of
25 cancellation with the Secretary of State, in accordance with Section
26 17707.02 or 17708.07 of the Corporations Code, before the end
27 of the 12-month period beginning with the date the final franchise
28 tax return was filed.

29 (2) For purposes of this subdivision, a “final franchise tax
30 return” is a return filed pursuant to Section 18601 on or before the
31 due date of the return, as extended, that the taxpayer designates in
32 the manner prescribed by the Franchise Tax Board as the taxpayer’s
33 final franchise tax return for purposes of the tax imposed under
34 this chapter. A final franchise tax return for purposes of the tax
35 imposed under this chapter is a return filed pursuant to Section
36 18601 where the taxpayer is not required to file a subsequent return
37 to reflect the imposition of tax under this chapter.

38 *SEC. 30. Section 623 of the Unemployment Insurance Code is*
39 *repealed.*

1 ~~623. “Employee” does not include any member of a limited~~
2 ~~liability company that is treated as a partnership for federal income~~
3 ~~tax purposes.~~

4 ~~SEC. 30.~~

5 ~~SEC. 31.~~ Section 1116 of the Unemployment Insurance Code
6 is amended to read:

7 1116. (a) (1) Every employing unit except a domestic or
8 foreign corporation or a domestic or foreign limited liability
9 company shall, within 10 days of quitting business, file with the
10 director a final return and report of wages of its workers, in such
11 form and containing such information as the director prescribes.

12 (2) Every domestic corporation and domestic limited liability
13 company shall, within 10 days of quitting business or within 10
14 days of the commencement of proceedings to wind up its affairs
15 and voluntarily dissolve, whichever expires the earlier, file with
16 the director a return and a report of wages of its workers, in such
17 form and containing such information as the director prescribes.

18 (3) Every foreign corporation and foreign limited liability
19 company shall, within 10 days of quitting business or within 10
20 days of the surrender of its right to engage in business of this state
21 in accordance with Section 2112 and subdivision (d) of Section
22 2114 of the Corporations Code for foreign corporations or Section
23 17708.08 of the Corporations Code for foreign limited liability
24 companies, whichever expires the earlier, file with the director a
25 final return and report of wages of its workers, in such form and
26 containing such information as the director prescribes.

27 (4) As used in this section, “quitting business” does not include
28 any change in the form or membership of an employing unit if
29 before and after such change 50 percent or more of the control of
30 management is held by the same individual, or is held by an
31 individual before death and after the individual’s death by the
32 individual’s estate or heirs.

33 (b) Contributions with respect to a return required under
34 subdivision (a) are due and payable on the first day of the
35 applicable 10-day period established pursuant to subdivision (a)
36 and shall become delinquent if not paid within 10 days of the due
37 date.

38 (c) The director for good cause may extend for not to exceed
39 30 days the time for making a return or paying without penalty or
40 interest any amount required to be paid under this section.

1 ~~SEC. 31.~~

2 *SEC. 32.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

11 *SEC. 33. Sections 1 to 18, inclusive, Sections 21 to 29,*
12 *inclusive, and Section 31 of this act shall become operative on*
13 *January 1, 2014.*